

PRELIMINARY DECREE
MILK RIVER BELOW WHITEWATER CREEK INCLUDING PORCUPINE CREEK
BASIN 400
ABSTRACT OF WATER RIGHT CLAIM

03/31/95
PAGE 884

WATER RIGHT NUMBER 40T -W-040958-00

***** THIS IS AN INTERBASIN TRANSFER CLAIM *****

THE POINT OF DIVERSION FOR THIS WATER RIGHT IS LOCATED IN ANOTHER BASIN. THE ABBREVIATED INFORMATION PROVIDED HERE IS TO DESCRIBE THE PLACE OF USE IN THIS BASIN. COMPLETE INFORMATION DESCRIBING THE ENTIRE RIGHT CAN BE FOUND IN THE POINT OF DIVERSION BASIN DECREE.

FOR THE CURRENT STATUS OF THE POINT OF DIVERSION BASIN, CONTACT THE MONTANA WATER COURT OR THE DNRC AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

THIS APPROPRIATION OF WATER TAKES WATER FROM THE ST. MARY RIVER DRAINAGE (BASIN 40T) AND USES IT IN THE UPPER MILK RIVER DRAINAGE (BASIN 40F), THE MIDDLE MILK RIVER DRAINAGE (BASIN 40J) AND THE LOWER MILK RIVER DRAINAGE (BASIN 400). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE EXAMINATION PROCESS. THESE CHANGES ARE AUTHORIZED BY THE MONTANA WATER COURT OR THE WATER RIGHT CLAIM EXAMINATION RULES AS ADOPTED BY THE MONTANA SUPREME COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." UNLESS OBJECTED TO OR CALLED IN ON MOTION OF THE MONTANA WATER COURT IN THIS DECREE, THE ELEMENTS OF THIS CLAIMED WATER RIGHT WILL APPEAR IN THE FINAL DECREE AS SHOWN ON THIS ABSTRACT. (SEE SECTION 85-2-233, MONTANA CODE ANNOTATED.)

OWNERS: USA (DEPT OF INTERIOR BUREAU OF RECLAMATION)
MONTANA PROJECTS OFFICE
PO BOX 30137
BILLINGS MT 59107

PURPOSE (USE):

SOURCE: SWIFTCURRENT CREEK
SOURCE TYPE: SURFACE WATER

* PRIORITY DATE: MAY 29, 1912

FLOW RATE:

VOLUME:

PERIOD OF USE:

POINT OF DIVERSION AND MEANS OF DIVERSION:

RESERVOIR:

* PLACE OF USE FOR :

ACRES LOT BLK QTR SEC SEC TWP RGE COUNTY

REMARKS:

FILED

PRELIMINARY DECREE
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WATER RIGHT NUMBER 40T -W-040958-00 (CONTINUED)

REMARKS CONTINUED:

THE PLACE OF USE IS LAND SERVICED UNDER THE MILK RIVER PROJECT WITHIN GLACIER, HILL, BLAINE, PHILLIPS, AND VALLEY COUNTIES.

A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING BASINS OR SUBBASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC EXAMINATION RESULTS AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 879, BOZEMAN MT 59771-0879.

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
HAVRE WATER RESOURCES REGIONAL OFFICE



BRIAN SCHWEITZER, GOVERNOR

210 6TH AVENUE
PO BOX 1828

STATE OF MONTANA

PHONE (406) 265-5516
FAX (406) 265-2225

FILED
HAVRE MONTANA 59501-1828

MEMORANDUM

APR 13 2009

TO: Anna Stradley-Rodman, Water Master **Montana Water Court**

FROM: Lynn Hester, Water Resources Specialist, Havre Regional Office

APPROVED BY:  Bob Larson, Regional Office Manager, Havre Water Resources
Regional Office

DATE: Monday April 9, 2009

SUBJECT: Bureau of Reclamation Claims Associated with Claims Amended
to Saleable Water

CLAIMS: 40F-40949-00, 40F-40951-00, 40T-40956-00, 40T-40958-
00, 40T-40960-00 and 40J 40937-00

CLAIMANT: USA (Dept. of Interior Bureau of Reclamation)

On October 16, 2008 the DNRC received amendments for claims 40J 40938, 40F-40948-00, 40T 40955-00 and 40T 40959 to amend the purpose to Saleable Water.

Claims 40F-40949-00, 40F 40950-00, 40F-40951-00, 40F 40952-00, 40T-40956-00, 40T 40957-00, 40T-40958-00, 40T-40960-00 are associated to the claims amended to saleable water and were going to be withdrawn by the Bureau of Reclamation when the DNRC accepted the saleable water amendments. Since these claims were to be withdrawn the claims were not closely looked at during the summary report preparation. The above claims have not been withdrawn therefore the DNRC is requesting that the following issues may be corrected on the review abstracts for these water right claims in preparation for the summary report for basin 40J.

The DNRC requests to remove all double entries such as Purposes, Period of Diversions, and Places of Use from review abstracts for the above claims.

Claim 40T 40956-00 In 2006 Fresno Reservoir was added to the claim. Lake Sherburne is clearly being claimed in the Place of Use record, item number 8 on original claim (see comment line under place of use) and the Place of Use Addendum submitted with the claim. A letter was sent to the Bureau of

Reclamation on August 4, 2006 asking if they would like to amend the claim to include Fresno Reservoir, Lake Bowdoin Wildlife Refuge and Nelson Reservoir. An amendment was never completed and returned to the DNRC. The DNRC requests that Fresno Reservoir is removed from the reservoir records as it was incorrectly added to the claim in 2006. If the Water Court grants this request from the DNRC then the conveyance remark should also be removed as well, as this claim is only for water in Lake Sherburne and the Place of Use remark should only include Lake Sherburne.

The DNRC requests that the Period of Diversion remark P164 is replaced with the P160 as no period of diversion was ever submitted and the Purpose remark P723 is replaced with the P725 as per the new examination rules. The DNRC also requests that a R75 be added, referring to the reservoir information in the claim file.

There is a supplemental remark (S135) that states, "WHENEVER THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE COMBINED TO SUPPLY WATER FOR THE CLAIMED PURPOSE, EACH IS LIMITED TO THE HISTORICAL 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. 40937-00, 40949-00, 40956-00"

The DNRC requests that claim number 40T 40956-00 be removed from this remark since it is for water only in Lake Sherburne. Claim 40J 40937-00 is for water in Bowdoin National Wildlife Refuge and 40F 40949-00 is for water in Fresno Reservoir and Bowdoin National Wildlife Refuge.

Removing this claim number from the remark will affect all claims involved, 40937-00, 40949-00, and 40956-00.

Claim 40T 40958-00 is claiming multiple purposes and an unidentifiable place of use. The DNRC requests that a P305 issue remark be added stating, THE CLAIMED PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

The DNRC requests that the following remarks either be replaced with the new examination remarks and/or corrected.

The PR3Z replaced with PRIS, wording will be the same.

The PU1Z replaced with a PUIN and PU2Z and replace with a PUIS, wording will be the same.

The PE3Z replaced with a PEIS, wording will be the same.

The G11Z replaced with G26, wording same except the "w" will be removed in front of claim number.

The T11Z replaced T15, wording will be the same.

The P164 be replaced with a P160, as no period of diversion was ever submitted.

The Standard Flow Rate remark (FFOO2) should be added.
The Enlarged Capacity from reservoir record should be removed.
A R75 should be added referring to the reservoir information in the claim file.

Claim 40T 40960-00 is claiming multiple purposes and an unidentifiable place of use. The DNRC requests that a P305 issue remark be added stating, THE CLAIMED PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

The DNRC requests that the following remarks either be replaced with the new examination remarks and/or corrected.

The FRIZ replaced with FRIS, wording will be the same.
The PL1Z replaced with PLIN, wording will be the same.
The GI1Z replaced with G26, wording same except remove "w" before claim number
The TI1Z replaced T15, wording same.

Claim 40F 40949-00 was examined in 1991 then in 2006 Nelson Reservoir was added to the Conveyance and the Place of Use remarks. Fresno Reservoir and Lake Bowdoin are clearly being claimed in the Place of Use record, item number 8 on original claim (see comment line under place of use and the on the Place of Use Addendum submitted with the claim). The DNRC requests that Nelson reservoir be removed from the Conveyance and the Place of Use remarks, the remarks should only include Fresno Reservoir and Lake Bowdoin.

The DNRC also requests that a R75 be added referring to the reservoir information in the claim file and the P164 is replace by the P160 as no period of diversion was ever submitted.

Claim 40F 40951-00 is claiming multiple purposes.

The DNRC requests that the following remarks either be replaced with the new examination remarks and/or corrected.

The PR3Z replaced with PRIS, wording will be the same.
The PU1Z replaced with a PUIN and PU2Z and replace with a PUIS, wording will be the same.
The VM3L replaced with VMIS, wording will be the same.
The PL3Z replaced with PLIS, request to remove the last part of remark that says "POSSIBLEY PLACE OF USE SHOULD BE DESCRIBED AS IN W040960-00". (Claim 40951 is for water from Fresno Reservoir and 40960 is for water from the St. Mary's River).
The GI1Z replaced with G26, wording same except the "w" will be removed in front of claim number.

The T11Z replaced with T15, wording will be the same.

The RN3Z replaced with R75, referring to the reservoir information in the claim file.

The P164 replaced with P160 as no period of diversion was ever submitted.

The Standard Flow Rate remark (FFOO2) should be added.

The DNRC also requests to remove the Enlarged Capacity from reservoir record.

The DNRC requests that 41P is added to the Inter-basin transfer remark. Places of Use parcel ID numbers 151 and 152 are in Liberty County in Basin 41P.

SERVICE LIST

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

MONTANA WATER COURT
ANNA STRADLEY-RODMAN, WATER MASTER
PO BOX 1389
BOZEMAN, MT 59771-1389

REVIEW ABSTRACT OF WATER RIGHT CLAIM

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED IN ACCORDANCE WITH THE SUPREME COURT RULES GOVERNING THE EXAMINATION OF THIS CLAIM.

Water Right Number: 40T 40958-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: ACTIVE

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

*Priority Date: MAY 29, 1912
Enforceable Priority Date: MAY 29, 1912

PR32 to PR15

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE ARE IN QUESTION. THE FILED NOTICE DOES NOT INDICATE RESERVOIR STORAGE. THE ACTUAL CONSTRUCTION OF SHERBURNE RESERVOIR BEGAN IN 1914. DATE OF FIRST STORAGE BEGAN IN 1919.

Type of Historical Right: FILED

Purpose (use): UNKNOWN

~~Purpose (use): UNKNOWN~~

PR12 to PR1N

THIS IS A STORAGE RIGHT USED ON THE MILK RIVER PROJECT FOR MUNICIPAL, STOCKWATER, DOMESTIC, FISH AND WILDLIFE AND OTHER BENEFICIAL PURPOSES.

PR22 to PR15

THE CLAIMED PURPOSE IS QUESTIONED. MULTIPLE PURPOSES OF USE ARE CLAIMED. THIS CLAIM MAY BE DUPLICATED BY OTHER MILK RIVER PROJECT CLAIMS.

*Flow Rate: FF002

Volume: 67,604.00 AC-FT

* Source: SWIFTCURRENT 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		SESESE	35	36N	15W	GLACIER

Period of Diversion: JANUARY 1 TO DECEMBER 31

~~JANUARY 1 TO DECEMBER 31~~

Diversion Means: DAM

Reservoir: ON STREAM Reservoir Name: LAKE SHERBURNE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
E2SESE	35	36N	15W	GLACIER	

Diversion to Reservoir: DIVERSION # 1

Dam Height: 94.00 FEET

Surface Area: 1,601.00 ACRES

Capacity: 67,604.00 ACRE-FEET

Enlarged Capacity: ~~67,604.00 ACRE-FEET~~

R75

Period of Use: JANUARY 1 to DECEMBER 31

PE32 to PE15

THE PERIOD OF USE IS IN QUESTION. ACCORDING TO THE U.S. GEOLOGICAL SURVEY WATER-DATA REPORT FOR 1990, THE YEARLY DIVERSION THROUGH THE ST. MARY CANAL IS FROM APRIL TO OCTOBER.

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>
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P305 - Place of use and legal land description

Period of Use: JANUARY 1 to DECEMBER 31

~~THE PERIOD OF USE IS IN QUESTION. ACCORDING TO THE U.S. GEOLOGICAL SURVEY WATER-DATA REPORT FOR 1990, THE YEARLY DIVERSION THROUGH THE ST. MARY CANAL IS FROM APRIL TO OCTOBER.~~

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>
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Remarks:

G26

THE COMPLETE SET OF DOCUMENTATION, MAPS AND OTHER RELATED MATERIALS CAN BE OBTAINED BY REVIEWING FILE NO. W040955-00.

P160

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

T15

THIS APPROPRIATION OF WATER TAKES WATER FROM THE ST. MARY RIVER DRAINAGE (BASIN 40T) AND USES IT IN THE UPPER MILK RIVER DRAINAGE (BASIN 40F), THE MIDDLE MILK RIVER DRAINAGE (BASIN 40J) AND THE LOWER MILK RIVER DRAINAGE (BASIN 40O). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

REVIEWED BY : LYNN D HESTER

DATE:

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**ST. MARY RIVER
BASIN 40T**

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 40T 40958-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: MAY 29, 1912

Type of Historical Right: FILED

Purpose (use): UNKNOWN

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 67,604.00 AC-FT

Source Name: SWIFTCURRENT 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		SESESE	35	36N	15W	GLACIER

Period of Diversion:

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** LAKE SHERBURNE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	E2SESE	35	36N	15W	GLACIER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 94.00 FEET

Surface Area: 1,601.00 ACRES

Capacity: 67,604.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: JANUARY 1 TO DECEMBER 31

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>
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Remarks:

THE COMPLETE SET OF DOCUMENTATION, MAPS AND OTHER RELATED MATERIALS CAN BE OBTAINED BY REVIEWING FILE NO. 40955-00.

THIS APPROPRIATION OF WATER TAKES WATER FROM THE ST. MARY RIVER DRAINAGE (BASIN 40T) AND USES IT IN THE UPPER MILK RIVER DRAINAGE (BASIN 40F), THE MIDDLE MILK RIVER DRAINAGE (BASIN 40J) AND THE LOWER MILK RIVER DRAINAGE (BASIN 40O). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

THE FOLLOWING POTENTIAL ISSUES WERE IDENTIFIED DURING CLAIMS EXAMINATION OR DURING PREVIOUS WATER COURT PROCEEDINGS. THESE ISSUES MAY REMAIN UNRESOLVED IF NO OBJECTIONS ARE FILED DURING THE NEXT OBJECTION PERIOD.

THIS INTERBASIN TRANSFER CLAIM RECEIVED OBJECTIONS IN BASIN 40J. NO ACTION WILL BE TAKEN ON THIS CLAIM UNTIL IT HAS BEEN DECREED IN ALL BASINS YET TO BE DECREED AND IDENTIFIED BY THE INTERBASIN TRANSFER REMARK.

THE PERIOD OF DIVERSION FROM THE SOURCE INTO STORAGE CANNOT BE IDENTIFIED.

THE CLAIMED PLACE OF USE AND LEGAL LAND DESCRIPTION COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE ARE IN QUESTION. THE FILED NOTICE DOES NOT INDICATE RESERVOIR STORAGE. THE ACTUAL CONSTRUCTION OF SHERBURNE RESERVOIR BEGAN IN 1914. DATE OF FIRST STORAGE BEGAN IN 1919.

THE PURPOSE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PURPOSES HAVE BEEN CLAIMED. THE CLAIMED PURPOSES INCLUDE MUNICIPAL, STOCKWATER, COMMERCIAL, FISH & WILDLIFE AND OTHER BENEFICIAL PURPOSES . MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT. IT APPEARS THIS WATER RIGHT MAY HAVE NOT BEEN PERFECTED.