

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

03/31/95  
PAGE 888

**WATER RIGHT NUMBER 40T -W-040960-00**

\*\*\*\*\* 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 OBJECTIONED 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: SAINT MARY RIVER  
SOURCE TYPE: SURFACE WATER

PRIORITY DATE: MAY 29, 1912

FLOW RATE:

VOLUME:

PERIOD OF USE:

POINT OF DIVERSION AND MEANS OF DIVERSION:

PLACE OF USE FOR :

\_\_\_\_\_  
ACRES LOT BLK QTR SEC SEC TWP RGE COUNTY

REMARKS:

**FILMED**

PRELIMINARY DECREE  
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BASIN 400  
ABSTRACT OF WATER RIGHT CLAIM

03/31/95  
PAGE 889

**WATER RIGHT NUMBER 40T -W-040960-00 (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

APR 13 2009

MEMORANDUM

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 PUI and PU2Z and replace with a PUIS, wording will be the same.

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

The GI1Z replaced with G26, wording same except the "w" will be removed in front of claim number.

The TI1Z 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 40960-00 STATEMENT OF CLAIM  
Version: 1 - ORIGINAL RIGHT  
Status: ACTIVE

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

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

Type of Historical Right: FILED

Purpose (use): UNKNOWN  
Purpose (use): UNKNOWN

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

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

\*Flow Rate: 850.00 CFS

FR42 to FR15

THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE ST. MARY CANAL. ACCORDING TO THE U.S. GEOLOGICAL SURVEY WATER-DATA REPORT FOR 1990, THE MAXIMUM DAILY DISCHARGE IS 767 CFS.

Volume: 10,741.00 AC-FT

61 THE CLAIMED VOLUME MAY BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

\* Source: SAINT MARY RIVER  
Source Type: SURFACE WATER

\*Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
*1		NESWNE	27	36N	14W	GLACIER

Period of Diversion: MARCH 1 TO OCTOBER 31

~~MARCH 1 TO OCTOBER 31~~

Diversion Means: DIVERSION DAM  
Ditch Name: ST. MARY CANAL

Period of Use: MARCH 1 to OCTOBER 31

P305 Place of Use Legal land description  
cannot identify.

Place of Use:

ID      Acres Govt Lot      Qtr Sec   Sec   Twp   Rge   County

PL12 to PL1A

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

Period of Use: MARCH 1 to OCTOBER 31

Place of Use:

ID      Acres Govt Lot      Qtr Sec   Sec   Twp   Rge   County

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

Remarks:

G26 THE COMPLETE SET OF DOCUMENTATION, MAPS AND OTHER RELATED MATERIALS CAN BE OBTAINED BY  
REVIEWING FILE NO. W040955-00.

OK 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 40960-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** MAY 29, 1912

**Type of Historical Right:** FILED

**Purpose (use):** UNKNOWN

**Flow Rate:** 850.00 CFS

**Volume:** 10,741.00 AC-FT

**Source Name:** SAINT MARY 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		NESWNE	27	36N	14W	GLACIER

**Period of Diversion:**

**Diversion Means:** DIVERSION DAM

**Ditch Name:** ST. MARY CANAL

**Period of Use:** MARCH 1 TO OCTOBER 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>

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

**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 OBJECTON 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.**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 40960-00, 124723-00, 129997-00, 153637-00, 153638-00, 153639-00, 153640-00, 153641-00, 153642-00, 153643-00, 192930-00.

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 COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

THE PURPOSE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PURPOSES HAVE BEEN CLAIMED. THE CLAIMED PURPOSES INCLUDE MUNICIPAL, STOCKWATER, DOMESTIC, 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.

THE CLAIMED VOLUME MAY BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.