

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
WILLOW CREEK BASIN (41N)
PRELIMINARY DECREE

CLAIMANT: Marvin J. Benjamin; Susan J. Benjamin

CASE 41N-0077-R-2020
41N 159503-00
41N 159507-00

NOTICE OF FILING OF MASTER'S REPORT

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires that written objections to a Master's Report must be filed within 10 days of the date of the Master's Report. Because the Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10 day objection period. Rule 6(d), M. R. Civ. P. This means your objection must be received no later than 13 days from the above stamped date.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court. If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER’S REPORT
FINDINGS OF FACT

1. The above-captioned claims appeared in the Preliminary Decree for Willow Creek (Basin 41N) with issue remarks.
2. On April 13, 2020, the above-captioned claims were consolidated into Water Court Case 41N-R77.
3. On April 13, 2020, this Court issued an Order Setting Filing Deadline, detailing a potential modification to claim 41N 159503-00 that would resolve the issue remark on the claim. The Order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the place of use for Claim No. 41N 159503-00 should be modified as described above”.
4. Pursuant to the Order, the following modifications should be made to Claim No. 41N 159503-00:

Place of Use:

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>SESW</u>	10	31N	2E	Toole

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.
2. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.
3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS 17, *6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v. Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, *6. It is within the power of this

Court to terminate a water right claim if a claimant fails to participate. Rule 22.
W.R.Adj.R.

CONCLUSIONS OF LAW

1. The claimants have failed to participate meaningfully in this case, despite being given opportunity to do so. *See Order Consolidating Case and Order Filing Deadline, April 13, 2020.* Accordingly, the record supports the adoption of the modification discussed above as a sanction for failing to comply with this Court's previous Orders and to resolve the issue remarks appearing on the claims. The remaining remarks were notice type remarks that have fulfilled their purpose and should be removed.

RECOMMENDATIONS

1. Upon review the record in this case, the above-captioned claim should be modified as discussed above. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

The parties are advised that the case number for this case has been modified to reflect the Court's new case management system protocol. All future filings shall use the updated case number in the caption and all case references.

Nathan Block
Water Master

Service via USPS Mail:

Marvin J. Benjamin
Susan J. Benjamin
Devon HC Box 44
Shelby, MT 59474

Note: Caption Updated 2-10-2021

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 159503-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: MARVIN J BENJAMIN
DEVON HC BOX 44
SHELBY, MT 59474

SUSAN J BENJAMIN
DEVON HC BOX 44
SHELBY, MT 59474

Priority Date: DECEMBER 31, 1938

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: COYOTE COULEE
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		NESESW	10	31N	2E	TOOLE

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESESW	10	31N	2E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 15 TO OCTOBER 15

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			SESW	10	31N	2E	TOOLE

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 159507-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: MARVIN J BENJAMIN
DEVON HC BOX 44
SHELBY, MT 59474

SUSAN J BENJAMIN
DEVON HC BOX 44
SHELBY, MT 59474

Priority Date: DECEMBER 31, 1939

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF INTERIOR DRAINAGE

Source Type: SURFACE WATER
NATURAL SINK

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		SENWNW	22	31N	2E	TOOLE

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWNW	22	31N	2E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO OCTOBER 15

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			S2NWNW	22	31N	2E	TOOLE