

Montana Water Court
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40N-0011-R-2021

December 17, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
ROCK CREEK, TRIBUTARY OF THE MILK RIVER BASIN (40N)
PRELIMINARY DECREE

CLAIMANTS: LaCock Cattle Co.; Timm Ranch Inc.

CASE 40N-0011-R-2021

40N 30136365
40N 30136410
40N 30137598
40N 30137600

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's 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. If you file an objection, you must serve 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

Statement of the case

The above captioned stock claims appeared in the Preliminary Decree with the following issue remarks.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40N DECREE ISSUED 08/13/1985.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 30136365 30137600

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 30136410 30137598

Claims 40N 30137598 and 40N 30137600 appeared in the Preliminary Decree with the following additional issue remark.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/5/2019, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY THE TIMM RANCH.

Claim 40N 30137600 appeared in the Preliminary Decree with the following additional issue remark.

NO PERIOD OF USE OR PERIOD OF DIVERSION ARE SPECIFIED ON THE CLAIM.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks. The duplicate claim, lack of the claims' inclusion in the previous 40N decree, and the potential owner issue remarks are resolved based on information before the court. Claimant, LaCock Cattle Co., failed to participate in the issue remark resolution process concerning the period of use and period of diversion for claim 40N 30137600. The court set a show cause filing deadline for LaCock Cattle Co.

Issues

1. What is the historically accurate period of use and period of diversion for stock claim 40N 30137600?

2. Are the issue remarks appearing on the claims resolved?

Finding of fact

The historically accurate period of use and period of diversion for claim 40N 30137600 is year-round.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.
2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.
3. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.
4. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.
5. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to

conform with information found in the claim file and information before the Court.
Section 85-2-248(9)(a),(b), MCA.

Analysis

Issues 1 and 2 (part of) – period of use and period of diversion; period of use and period of diversion issue remark resolution, claim 40N 30137600

Pursuant to § 85-2-248(3), MCA, LaCock Cattle Co. was ordered to file a statement with the court identifying the historical period of use and period of diversion for livestock direct from source claim 40N 30137600. LaCock Cattle Co. failed to file a statement by the deadline.

Based upon information in claim file 40N 30137600, the claim is for livestock drinking directly from Cache Creek, indicating that stock will drink whenever water is available. Stock claims of this nature routinely identify a year-round period of use and period of diversion. An order set a filing deadline for LaCock Cattle Co. to show cause why claim 40N 30137600 should not be amended to reflect a year-round period of use and period of diversion thereby resolving the period of use and period of diversion issue remark. LaCock Cattle Co. also failed to comply with this filing deadline.

LaCock Cattle Co.'s failure to provide any evidence to address or resolve the period of use and period of diversion issue remark leaves the recommended year-round period of use and period of diversion as strong evidence of actual historical use.

Conclusions of law

Based on information in the claim file and LaCock Cattle Co.'s failure to comply with orders issued by the Water Master, claim 40N 30137600 should be amended as recommended by the show cause order. The period of use and period of diversion issue remark on the claim is resolved.

Issue 2 – issue remark resolution, all claims

Upon review of each claim, the claims each identify a different source and a different priority date. The claims are not duplicate claims.

Timm Ranch Inc. was provided notice of its potential ownership in claims 40N 30137598 and 40N 30137600, and the opportunity to comment on its potential ownership of these claims. The order included language that if Timm Ranch Inc. did not file a statement by the deadline, it would be considered Timm Ranch Inc.'s agreement that it is not the current owner of claims 40N 30137598 and 40N 30137600. Timm Ranch Inc. did not file a statement by the deadline, signaling that it has no ownership interest in the claims. Both LaCock Cattle Co. and Timm Ranch Inc. are reminded that the Glasgow Regional Office of the DNRC may be contacted to update ownership of claims as necessary.

The above captioned claims are existing rights for stock drinking directly from a source. The claims meet the definition of an "exempt claim." Section 85-2-222(1), MCA. In 2013 and 2017, the Montana Legislature amended § 85-2-222, MCA, and provided for the filing of exempt claims subject to specified terms and conditions. These claims are timely filed exempt claims.

The abstract of each claim included an issue remark advising water users that the claims had not been included in the previously issued Preliminary Decree. Water users were given the opportunity to review these claims and file an objection.

The deadline to file objections has expired. No objections were filed against these claims.

Conclusions of law

The duplicate claim and potential owner issue remarks are resolved. The issue remark concerning lack of the claims' inclusion in the previous decree served its notice purpose.

Recommendations

The elements of stock claims 40N 30136365, 40N 30136410, and 40N 30137598 accurately reflect historical use. No changes to the elements of the claims should be made.

Stock claim 40N 30137600 should be amended as follows to accurately reflect

historical use.

PERIOD OF USE AND PERIOD OF DIVERSION:

BLANK

JANUARY 1 TO DECEMBER 31

The issue remarks appearing on the claims should be removed.

Post Decree Abstracts of Water Right Claim accompany this report to confirm the implementation of the recommendations in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via USPS Mail

LaCock Cattle Co.
PO Box 56
Hinsdale, MT 59241-0056
(406) 648-7223
(406) 263-8227
(406) 648-5523 (cell)
lacockst@nemont.net

Timm Ranch Inc.
c/o Rye Svingen
1415 Highland St.
Helena, MT 59601
(406) 671-2446
ryes@hydrosoi.com

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
ROCK CREEK, TRIBUTARY TO MILK RIVER
BASIN 40N**

Water Right Number: 40N 30136365 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TIMM RANCH INC
C/O RYAN SVINGEN
1415 HIGHLAND ST
HELENA, MT 59601

Priority Date: OCTOBER 8, 1910

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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: SPRING, UNNAMED TRIBUTARY OF CACHE CREEK

Source Type: SURFACE WATER

SOURCE IS COMPOSED OF SEVERAL UNDEVELOPED SPRINGS WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

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		NE	31	32N	36E	VALLEY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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>
1			NE	31	32N	36E	VALLEY

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
ROCK CREEK, TRIBUTARY TO MILK RIVER
BASIN 40N**

Water Right Number: 40N 30136410 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TIMM RANCH INC
C/O RYAN SVINGEN
1415 HIGHLAND ST
HELENA, MT 59601

Priority Date: JULY 29, 1915

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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 BLUFF CREEK

Source Type: SURFACE WATER

Source Name: BLUFF CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	14	36N	36E	VALLEY

Source Name: BLUFF CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NESW	14	36N	36E	VALLEY
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Source Name: UNNAMED TRIBUTARY OF BLUFF CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		SE	14	36N	36E	VALLEY
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Source Name: UNNAMED TRIBUTARY OF BLUFF CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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>
1			SE	14	36N	36E	VALLEY
2			SE	14	36N	36E	VALLEY
3			NESW	14	36N	36E	VALLEY

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
ROCK CREEK, TRIBUTARY TO MILK RIVER
BASIN 40N**

Water Right Number: 40N 30137598 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LACOCK CATTLE CO.
PO BOX 56
HINSDALE, MT 59241 0056

Priority Date: DECEMBER 31, 1915

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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: BLUFF 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		SE	14	36N	36E	VALLEY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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>
1			SE	14	36N	36E	VALLEY

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
ROCK CREEK, TRIBUTARY TO MILK RIVER
BASIN 40N

Water Right Number: 40N 30137600 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LACOCK CATTLE CO.
PO BOX 56
HINSDALE, MT 59241 0056

Priority Date: DECEMBER 31, 1923

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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: CACHE 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		NE	31	32N	36E	VALLEY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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>
1			NE	31	32N	36E	VALLEY