

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

ELECTRONICALLY FILED

40N-0027-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

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CLAIMANT: Borderview Bell Ranch LP

**CASE 40N-0027-R-2021**  
40N 168519-00

**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 claim appeared in the Preliminary Decree with the following issue remarks:

THE PLACE OF USE IS IN THE SWSWSW SEC. 19 GOVT. LOT 4. TWP 37N RGE 40E VALLEY COUNTY.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM 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. Claimant failed to participate in the issue remark resolution process. The court set a show cause filing deadline for claimant.

### **Issues**

1. What is the historically accurate place of use?
2. Is the place of use issue remark resolved?
3. Is the notice issue remark concerning point of diversion resolved?

### **Findings of fact**

The Preliminary Decree abstract of claim 40N 168519-00 identifies a place of use located in Government Lot 1, NW of Section 30, Township 37 North, Range 40 East, Valley County.

The historically accurate place of use is Government Lot 4, SWSWSW of Section 30, Township 37 North, Range 40 East, Valley County.

## **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 – place of use; issue remark resolution**

Pursuant to § 85-2-248(3), MCA, claimant was ordered to file a statement with the court agreeing or disagreeing with the modified place of use suggested by the issue remark. Claimant failed to file a statement by the deadline.

An order set a filing deadline for claimant to show cause why claim 40N 168519-00 should not be amended as suggested by the issue remark to resolve the place of use issue remark. Claimant also failed to comply with this filing deadline.

Claimant's failure to provide any evidence to address or resolve the place of use issue remark leaves the claims examination and resulting issue remark as strong evidence of actual historical use.

### **Conclusions of law**

Information in the claim file and the claimant's failure to comply with orders issued by the Water Master provides a preponderance of evidence that claim 40N 168519-00 should be amended as recommended by the place of use issue remark. The place of use issue remark is resolved.

### **Issues 3 – point of diversion; issue remark resolution**

Stock claim 40N 168519-00 appeared in the Preliminary Decree with the above referenced notice issue remark concerning point of diversion.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections has expired. No objections were filed against the claim.

### **Conclusions of law**

The point of diversion identified by the Preliminary Decree abstract is historically accurate. The notice issue remark concerning point of diversion served its purpose.

### **Recommendations**

Stock claim 40N 168519-00 should be amended as follows to accurately reflect

historical use.

**PLACE OF USE:**

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	1	NW	30	37N	40E	VALLEY
	4	SWSWSW	19	37N	40E	VALLEY

The issue remarks should be removed from the claim abstract.

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

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Anna M. Stradley  
Senior Water Master

**Service via USPS Mail**

Borderview Bell Ranch LP  
~~PO Box 679~~  
~~Big Timber, MT 59011~~  
**PO Box 331**  
**Opheim, MT 59250**

**Service List Updated 12/16/2021**

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

**Water Right Number:** 40N 168519-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BORDERVIEW BELL RANCH LP  
PO BOX 331  
OPHEIM, MT 59250

**Priority Date:** JANUARY 25, 1915

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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:** MORGAN 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	4	SWSWSW	19	37N	40E	VALLEY

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**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>
	NW	30	37N	40E	VALLEY

**Diversion to Reservoir:** DIVERSION # 1

**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		4	SWSWSW	19	37N	40E	VALLEY