

40N-0023-R-2021

July 14, 2021

Montana Water Court
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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: State of Montana (Board of Land Commissioners)

CASE 40N-0023-R-2021
40N 76032-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this report carefully. You may file a written objection to the Report if you disagree or find errors 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 written objections to the 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

Statement of the case

Wildlife claim 40N 76032-00 appeared in the Preliminary Decree with the following issue remark.

PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED VOLUME OF .21 ACRE-FEET WILL BE REINSTATED.

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.

Issues

The Preliminary Decree abstract for claim 40N 76032-00 identifies a blank volume.

1. What is the historically accurate volume?
2. Is the volume issue remark resolved?

Finding of fact

The historically accurate volume for claim 40N 76032-00 is 0.21 AF.

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.
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.

Analysis

Issues 1 and 2 –volume; issue remark resolution

Statement of claim 40N 76032-00 identifies a 0.21 AF volume. The volume is afforded prima facie proof. The issue remark notified water users of their opportunity to object to the reinstatement of the 0.21 AF volume. The remark instructed water users that if no objections were filed to the volume identified by the issue remark, the volume would be reinstated. No objections were filed against the claim and the deadline to file objections has expired.

Conclusions of law

The historically accurate volume is 0.21 AF. The volume notice issue remark served its purpose.

Recommendations

Wildlife claim 40N 76032-00 should be modified as follows to accurately reflect historical use.

| | | |
|-----------------------|------------------|----------------|
| <u>VOLUME:</u> | BLANK | 0.21 AF |
|-----------------------|------------------|----------------|

The volume issue remark should be removed from the claim abstract.

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

Anna M. Stradley
Senior Water Master

Service via Electronic Mail

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

Water Right Number: **40N 76032-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: AUGUST 31, 1969

Type of Historical Right: USE

Purpose (Use): WILDLIFE

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

Volume: 0.21 AC-FT

Source Name: UNNAMED TRIBUTARY OF WILLOW 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 | | NWNESW | 25 | 36N | 39E | 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | NWNESW | 25 | 36N | 39E | 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 | | | NWSESW | 25 | 36N | 39E | VALLEY |

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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