

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

ELECTRONICALLY FILED

40P-4001-S-2021

July 2, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
REDWATER RIVER - BASIN (40P)

* * * * *

CLAIMANTS: Dewaine C. Carlsen; Linda E. Carlsen; Longrass Farms

CASE 40P-4001-S-2021

40P 133044-00

40P 30150062

NOTICE OF FILING OF MASTER'S REPORT

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

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water 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

On February 2, 2021 the Glasgow DNRC Regional Office filed a Memorandum concerning the review of the DNRC Ownership Update Divided Interest Form 641 for Longrass Farms, Dewaine C. Carlsen, and Linda E. Carlsen irrigation claim 40P 133044-00. On March 2, 2021 the Court issued an Order Setting Filing Deadline for claimants Longrass Farms, Dewaine C. Carlsen, and Linda E. Carlsen to file written requests to split claim 40P 133044-00 into a separate claim for Longrass Farms and a separate claim for the Carlsens. The filing deadline was April 5, 2021. On April 5, 2021 Dewaine C. Carlsen and Linda E. Carlsen ["Carlsen"] filed a Notice Of Appearance And Request To Split Water Right 40P 133044-00. This is deemed a motion. The Certificate of Service indicates this was mailed to Longrass Farms. Longrass Farms did not file a written request to split the claim per the Court's Order and did not file an answer to the Carlsen motion.

The documentation filed with the DNRC Memorandum and the Carlsen Request to Split Water Right 40P 133044-00 are sufficient to proceed with splitting the claim as requested. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights. Section 3-7-224, MCA.

The Water Court may split a claim with multiple owners into separate claims upon request of all the claimants prior to issuance of the final decree. Rule 26, W.R.Adj.R.

Failure to file an answer to a motion is deemed an admission that the motion is well taken. Rule 2, U.D.C.R.

FINDINGS OF FACT

1. Claim 40P 133044-00 should be modified to represent only the Longrass Farms portion of the claimed right. Claim 40P 30150062 should be generated for the Dewaine C. Carlsen and Linda E. Carlsen portion of the claimed right.

2. Claim 40P 133044-00 should be modified as follows: 1) the ownership should be

modified by removing Dewaine C. Carlsen and Linda E. Carlsen as co-owners, 2) the volume should be reduced from 60.00 acre feet to 55.50 acre feet, 3) the maximum acres should be reduced from 40.00 acres to 37.00 acres, and 4) the place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
7.50	NENESE	28	25N	51E	RICHLAND
16.25	SENE	28	25N	51E	RICHLAND
<u>13.25</u>	SWNW	27	25N	51E	RICHLAND
37.00					

In addition, the standard flow rate remark for water spreading claims is missing. The following standard remark should be added to the flow rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

3. The elements of claim 40P 30150062 should be same as 40P 133044-00 except: 1) the owner should be Dewaine C. Carlsen and Linda E. Carlsen, 2) the volume should be 4.50 acre feet, 3) the maximum acres should be 3.00 acres, and 4) the place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
3.00	NWNWSW	27	25N	51E	RICHLAND

CONCLUSIONS OF LAW

Longrass Farm's failure to file an answer to the Carlsen motion is deemed Longrass Farm's admission that the motion is well taken.

The documentation filed by the DNRC and Carlsen provide sufficient information to split the claim in order to reflect the divided interests.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to split claim 40P 133044-00 as requested by the claimants. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes to 40P 133044-00 and the generation of split claim 40P 30150062 have been made in the state's centralized record

system.

Kathryn L. W. Lambert
Senior Water Master

Service Via USPS Mail:

Longgrass Farms
% Larry Johnston
14148 Hwy 480
Poplar, MT 59255
(406) 773-5671

Last order:

Dewaine C. Carlsen
Linda E. Carlsen
5428 Klements Ln
Florence, MT 59833

Service Via Electronic Mail:

David T. Markette
MARKETTE & CHOUINARD, P.C.
PO Box 515
Hamilton, MT 59841
(406)363-1110
davidm@mcpcattorneys.com
receptionist@mcpcattorneys.com

*Service list updated 5/7/21

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
REDWATER RIVER
BASIN 40P**

Water Right Number: 40P 133044-00 STATEMENT OF CLAIM

Version: 2 -- SPLIT POST DECREE

Status: ACTIVE

Owners: LONGGRASS FARMS
C/O LARRY JOHNSTON
14148 HWY 480
POPLAR, MT 59255

Priority Date: JULY 15, 1934

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING

Volume: 55.50 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 37.00

Source Name: UNNAMED TRIBUTARY OF EAST REDWATER 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		NENESE	28	25N	51E	RICHLAND

Period of Diversion: JANUARY 15 TO MAY 31

Diversion Means: DIVERSION DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENESE	28	25N	51E	RICHLAND

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 15 TO MAY 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	7.50		NENESE	28	25N	51E	RICHLAND
2	16.25		SENE	28	25N	51E	RICHLAND
3	13.25		SWNW	27	25N	51E	RICHLAND

Total: 37.00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
REDWATER RIVER
BASIN 40P**

Water Right Number: 40P 30150062 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: DEWAINE C CARLSEN
5428 KLEMENTS LN
FLORENCE, MT 59833

LINDA E CARLSEN
5428 KLEMENTS LN
FLORENCE, MT 59833

Priority Date: JULY 15, 1934

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT
FLOW WATER SPREADING

Volume: 4.50 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 3.00

Source Name: UNNAMED TRIBUTARY OF EAST REDWATER 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		NENESE	28	25N	51E	RICHLAND

Period of Diversion: JANUARY 15 TO MAY 31

Diversion Means: DIVERSION DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENESE	28	25N	51E	RICHLAND

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 15 TO MAY 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	3.00		NWNWSW	27	25N	51E	RICHLAND

Total: 3.00