

July 27, 2021

Montana Water Court

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

\*\*\*\*\*

CLAIMANTS: Richard L. Wickum; Mark A. Wickum

OBJECTOR: Mark A. Wickum

**CASE 41N-0008-R-2020**

41N 98822-00

41N 98826-00

41N 98834-00

41N 98845-00

**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. A Master's Report was issued on February 23, 2021 and Mark Wickum filed an Objection to the Master's Report on March 2, 2021, detailing certain modifications to claims 41N 98826-00, 41N 98834-00 and 41N 98845-00 that were needed to reflect historical use. On March 4, 2021, the case was remanded and on March 9, 2021, an Order Requiring Publication was issued.

2. Pursuant to the Objection and the Notice, claim 41N 98826-00 should be modified as follows:

Period of Diversion: **January 1 to December 31**

3. Pursuant to the Objection and the Notice, claim 41N 98834-00 should be modified as follows:

Period of Use: **January 1 to December 31**

3. Pursuant to the Objection and the Notice, claim 41N 98845-00 should be modified as follows:

Period of Use: **January 1 to December 31**

4. Over 45 days have passed since the date of last publication of the public notice. No objections to the proposed amendment have been filed.

### 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. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

## CONCLUSION OF LAW

1. The notice requirements for a motion to amend claim specified in section 85-2-233(6), MCA have been met in regard to the claims discussed above.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by other evidence that proves that one or more elements of the prima facie Statement of Claim are incorrect. This is the applicable standard of proof regardless of whether the objectors are adverse parties or are the claimants objecting to their own water right claims. *See* Memorandum Opinion, Order Adopting Master's Report, Water Court Case 40G-2 (March 11, 1997).

3. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the stipulation are supported by evidence. Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” *United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees*, Case 42B-1, ¶ 3 at p. 14, (*Order Denying Motion* June 27, 2014). Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claim.

## RECOMMENDATION

1. Upon review the record in this case, the above-captioned claims 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.

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Nathan Block  
Water Master

**Service via USPS Mail:**

Richard L. Wickum  
1451 Whitlash Road  
Chester, MT 59522-7506

Mark A. Wickum  
PO Box 491  
Chester, MT 59522-0491

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

**Water Right Number:**      **41N 98822-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      MARK A WICKUM  
   PO BOX 491  
   CHESTER, MT 59522 0491

   RICHARD L WICKUM  
   1451 WHITLASH RD  
   CHESTER, MT 59522 7506

**Priority Date:**                      DECEMBER 31, 1953

**Type of Historical Right:**      USE

**Purpose (Use):**                      STOCK

**Flow Rate:**                      5.00 GPM

**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:**                      GROUNDWATER

**Source Type:**                      GROUNDWATER

**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		SWSWSE	21	35N	4E	LIBERTY

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

**Diversion Means:**              WELL

**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				21	35N	4E	LIBERTY
2				28	35N	4E	LIBERTY

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

**Water Right Number:**      **41N 98826-00**      STATEMENT OF CLAIM

**Version:**      4 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      MARK A WICKUM  
                                     PO BOX 491  
                                     CHESTER, MT 59522 0491

                                     RICHARD L WICKUM  
                                     1451 WHITLASH RD  
                                     CHESTER, MT 59522 7506

**Priority Date:**                      DECEMBER 31, 1943

**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:**                      EAGLE 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		SENE SW	21	35N	4E	LIBERTY

**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>
	SENE SW	21	35N	4E	LIBERTY

**Diversion to Reservoir:**      DIVERSION # 1

**Dam Height:**                      13.00 FEET

**Depth:**                              10.00 FEET

**Surface Area:**                      24.00 ACRES

**Capacity:**                              24.00 ACRE-FEET

**Period of Use:**                      APRIL 1 TO NOVEMBER 30

**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			NESW	21	35N	4E	LIBERTY

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

**Water Right Number:**      **41N 98834-00**      STATEMENT OF CLAIM

**Version:**      4 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      MARK A WICKUM  
                                     PO BOX 491  
                                     CHESTER, MT 59522 0491

                                     RICHARD L WICKUM  
                                     1451 WHITLASH RD  
                                     CHESTER, MT 59522 7506

**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:**                      UNNAMED TRIBUTARY OF EAGLE 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		SENWNE	17	35N	4E	LIBERTY

**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>
	SENWNE	17	35N	4E	LIBERTY

**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			NWNWNE	17	35N	4E	LIBERTY

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

**Water Right Number:**      **41N 98845-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      MARK A WICKUM  
   PO BOX 491  
   CHESTER, MT 59522 0491

   RICHARD L WICKUM  
   1451 WHITLASH RD  
   CHESTER, MT 59522 7506

**Priority Date:**                      DECEMBER 31, 1920

**Type of Historical Right:**      USE

**Purpose (Use):**                      IRRIGATION

**Irrigation Type:**      SPRINKLER

**Flow Rate:**                      10.00 GPM

**Volume:**                      THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT  
   PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:**              4 - MODERATELY LOW

**Maximum Acres:**                      1.00

**Source Name:**                      SPRING, UNNAMED TRIBUTARY OF EAGLE CREEK

**Source Type:**                      GROUNDWATER

**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		NESENW	17	35N	4E	LIBERTY

**Period of Diversion:**      APRIL 1 TO JUNE 30

**Diversion Means:**              DEVELOPED SPRING

**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	1.00		NESENW	17	35N	4E	LIBERTY
<b>Total:</b>	1.00						