

41N-0011-R-2021

July 29, 2021

Montana Water Court

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

\*\*\*\*\*

CLAIMANTS: Montana State Board of Land Commissioners;  
Leslie D. Eide

**CASE 41N-0011-R-2021**

41N 30114-00

41N 37280-00

41N 37293-00

41N 37314-00

**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.

2. On February 23, 2021, the above-captioned claims were consolidated into Water Court Case 41N-0011-R-2021 and on March 24, 2021 a Status Conference was held. Claimant Leslie D. Eide failed to appear at the Conference.

3. On March 26, 2021, this Court issued an Order Setting Filing Deadline, detailing potential modifications to the claims that would resolve the issue remarks. The Order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the modifications described above should be implemented”. Nothing was filed in response to the Order.

4. On March 26, 2021, the State of Montana Trust Land Management Division (“TLMD”) filed a Motion to Amend, seeking to change the Type of Historical Right to ‘Use’ and remove Place of Use #3 from claim 41N 30114-00.

5. Pursuant to the March 26, 2021 Order, the Type of Historical Right for the claims should be modified to ‘Use’ and the following remark should be placed on the applicable claims:

THE FOLLOWING RIGHTS ARE LIMITED TO A TOTAL COMBINED  
FLOW RATE OF 30 CFS.  
41N 30114-00, 41N 37280-00, 41N 37293-00

## **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. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as

are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.

3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS 17, \*6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v. Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, \*6. It is within the power of this Court to terminate a water right claim if a claimant fails to participate. Rule 22. W.R.Adj.R.

### **CONCLUSION OF LAW**

1. Leslie Eide has failed to participate meaningfully in this case, despite being given opportunity to do so. *See Order Consolidating Case and Order Filing Deadline*, February 23, 2021; *Minutes and Order Setting Filing Deadline*; March 26, 2021. Accordingly, the record supports the adoption of the modifications discussed above as a sanction for failing to comply with this Court’s previous Orders and to resolve the issue remarks appearing on the claim. The modifications sought by TLMD should be granted.

### **RECOMMENDATION**

1. Upon review the record in this case, the 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.

---

Nathan Block  
Water Master

**Service via USPS Mail:**

Leslie D. Eide  
200 Eide Ranch Road  
Galata, MT 59444-9801

**Service via Electronic Mail:**

Michele L. Snowberger  
Montana Attorney General  
Agency Legal Services Bureau  
PO Box 201440  
Helena, MT 59620  
(406) 444-2026  
[BLCWaterCourt@mt.gov](mailto:BLCWaterCourt@mt.gov)

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

**Water Right Number:**      **41N 30114-00**      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:**      OCTOBER 1, 1952

**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.

THE FOLLOWING RIGHTS ARE LIMITED TO A TOTAL COMBINED FLOW RATE OF  
30 CFS. 41N 30114-00, 41N 37280-00, 41N 37293-00

**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:**      SHEEP 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		NENWNW	36	35N	2E	TOOLE

**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>
	NENWNW	36	35N	2E	TOOLE

**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			NENWNW	36	35N	2E	TOOLE
2			NWNENW	36	35N	2E	TOOLE

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

**Water Right Number:**      **41N 37280-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      LESLIE D EIDE  
                                     200 EIDE RANCH RD  
                                     GALATA, MT 59444 9801

**Priority Date:**              OCTOBER 1, 1952

**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.

THE FOLLOWING RIGHTS ARE LIMITED TO A TOTAL COMBINED FLOW RATE OF 30 CFS. 41N 30114-00, 41N 37280-00, 41N 37293-00

**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:**              SHEEP 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		NENENE	35	35N	2E	TOOLE

**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>
	NENENE	35	35N	2E	TOOLE

**Diversion to Reservoir:**      DIVERSION # 1

**Dam Height:**                13.00 FEET

**Depth:**                      10.00 FEET

**Surface Area:**              3.25 ACRES

**Capacity:**                  13.00 ACRE-FEET

**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			NENENE	35	35N	2E	TOOLE

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

**Water Right Number:**      **41N 37293-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      LESLIE D EIDE  
                                     200 EIDE RANCH RD  
                                     GALATA, MT 59444 9801

**Priority Date:**                OCTOBER 1, 1952

**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.

THE FOLLOWING RIGHTS ARE LIMITED TO A TOTAL COMBINED FLOW RATE OF 30 CFS. 41N 30114-00, 41N 37280-00, 41N 37293-00

**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:**                SHEEP 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		NWNENW	36	35N	2E	TOOLE

**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>
	NWNENW	36	35N	2E	TOOLE

**Diversion to Reservoir:**    DIVERSION # 1

THIS DAM EXTENDS INTO THE NENWNW SEC 36 AND THE SWSESW SEC 25 TWP 35N RGE 02E TOOLE COUNTY

**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			SWSESW	25	35N	2E	TOOLE

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

**Water Right Number:**      **41N 37314-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      LESLIE D EIDE  
                                     200 EIDE RANCH RD  
                                     GALATA, MT 59444 9801

**Priority Date:**                OCTOBER 1, 1961

**Type of Historical Right:**    USE

**Purpose (Use):**                IRRIGATION

**Irrigation Type:**            FLOOD

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

**Volume:**                    50.00 AC-FT

**Climatic Area:**            4 - MODERATELY LOW

**Maximum Acres:**           77.00

**Source Name:**              SHEEP 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		NENENE	35	35N	2E	TOOLE

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

**Diversion Means:**        DAM

2		NWNENE	35	35N	2E	TOOLE
---	--	--------	----	-----	----	-------

**Period of Diversion:**      JANUARY 1 TO DECEMBER 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>
	NENENE	35	35N	2E	TOOLE

**Diversion to Reservoir:**    DIVERSION # 1

**Dam Height:**              13.00 FEET

**Depth:**                    10.00 FEET

**Surface Area:**            3.25 ACRES

**Capacity:**                13.00 ACRE-FEET

**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	4.00	SWSWSE	26	35N	2E	TOOLE
2	10.00	SESESW	26	35N	2E	TOOLE
3	1.50	NESESW	26	35N	2E	TOOLE
4	8.00	SWSESW	26	35N	2E	TOOLE
5	1.00	SESWSW	26	35N	2E	TOOLE
6	1.00	SWNENE	35	35N	2E	TOOLE
7	4.00	SENWNE	35	35N	2E	TOOLE
8	4.00	SWNWNE	35	35N	2E	TOOLE
9	5.00	NWNENE	35	35N	2E	TOOLE
10	5.00	NENWNE	35	35N	2E	TOOLE
11	8.00	NWNWNE	35	35N	2E	TOOLE
12	8.00	NWNENW	35	35N	2E	TOOLE
13	6.50	NENWNW	35	35N	2E	TOOLE
14	8.00	SWNENW	35	35N	2E	TOOLE
15	2.00	SENWNW	35	35N	2E	TOOLE
16	1.00	NWSENW	35	35N	2E	TOOLE
<b>Total:</b>	<u>77.00</u>					

---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

37302-00      37307-00      37310-00      37311-00      37313-00      37314-00