

July 2, 2021

Montana Water Court

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

CLAIMANT: Greg M. Matteson; Shawn L. Matteson

CASE 41N-0034-R-2020

41N 121540-00

41N 153274-00

41N 153276-00

41N 153277-00

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 May 13, 2020, the above-captioned claims were consolidated into Water Court Case 41N-0034-R-2021 and this Court issued an Order Setting Filing Deadline, detailing a potential modification to claim 41N 121540-00 that would resolve the issue remarks.

3. Claimants Greg and Shawn Matteson responded to the Order and a series of deadlines was set and responded to, culminating in Claimants' March 19, 2021 filing. The filing detailed various modifications to the claims required to ensure the claims reflect historical use.

4. Claimants state that the places of use for claim 41N 121540-00 were correct as originally claimed and subsequently decreed and that the DNRC place of use issue remark was erroneously placed on the claim.

5. The reservoir capacity for claim 41N 153274-00 was reduced during reexamination from 18 acre-feet to 4.5 acre-feet. It appears that the modification was a clerical error and should be corrected to reflect the 18 acre-feet capacity consistent with historical use.

6. Claimants requested that Cavitt Coulee be added as a source for claim 41N 153276-00 and presented documentation supporting the addition of the source.

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. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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 the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The place of use issue remark appearing on claim 41N 121540-00 fails to overcome the prima facie status of the claim and the remark should be removed.
2. The reservoir capacity for claim 41N 153274-00 should be corrected to 18 acre-feet.
3. Cavitt Coulee should be added as an additional source for claim 41N 153276-00.

RECOMMENDATIONS

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.

Nathan Block
Water Master

Service via USPS Mail:

Greg M. Matteson
Shawn L. Matteson
1876 Galata Rd
Galata, MT 59444

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

Water Right Number: **41N 121540-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GREG M MATTESON
 1876 GALATA RD
 GALATA, MT 59444

 SHAWN L MATTESON
 1876 GALATA RD
 GALATA, MT 59444

Priority Date: DECEMBER 31, 1940

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: ALKALI COULEE

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		SWSWNE	32	35N	3E	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>
	SWSWNE	32	35N	3E	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			NWNWSE	32	35N	3E	TOOLE
2			SWSWNE	32	35N	3E	TOOLE

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

Water Right Number: 41N 153274-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GREG M MATTESON
1876 GALATA RD
GALATA, MT 59444

SHAWN L MATTESON
1876 GALATA RD
GALATA, MT 59444

Priority Date: MAY 15, 1910

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: PRICE COULEE

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	3	34N	3E	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>
	NWNESW	3	34N	3E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 4.50 ACRES

Capacity: 18.00 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>
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1

NWNESW

3

34N

3E

TOOLE

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

Water Right Number: **41N 153276-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GREG M MATTESON
 1876 GALATA RD
 GALATA, MT 59444

 SHAWN L MATTESON
 1876 GALATA RD
 GALATA, MT 59444

Priority Date: MAY 15, 1910

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: PRICE COULEE

Source Type: SURFACE WATER

THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM CAVITT
COULEE.

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		SENWNW	4	34N	3E	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>
	SENWNW	4	34N	3E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 4.20 ACRES

Capacity: 16.80 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			SENWNW	4	34N	3E	TOOLE
2			SWNENW	4	34N	3E	TOOLE

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

Water Right Number: **41N 153277-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GREG M MATTESON
 1876 GALATA RD
 GALATA, MT 59444

 SHAWN L MATTESON
 1876 GALATA RD
 GALATA, MT 59444

Priority Date: MAY 15, 1910

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: PRICE COULEE

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		SESENW	3	34N	3E	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>
	SESENW	3	34N	3E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 10.50 ACRES

Capacity: 42.00 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>
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1	SWSWNE	3	34N	3E	TOOLE
2	SESENW	3	34N	3E	TOOLE