

Montana Water Court
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400-2283-P-2015

September 17, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MILK RIVER BELOW WHITEWATER CREEK INCLUDING PORCUPINE CREEK (400)

CLAIMANT: City of Havre

OBJECTOR: State of Montana

CASE 400-2283-P-2015
40J 196565-00
40J 196627-00
40J 196628-00
40J 196629-00

**ORDER APPROVING STIPULATION, VACATING SCHEDULING ORDER,
AND CLOSING CASE**

The City of Havre’s flood control claims had issue remarks questioning the beneficial use of the water for the claimed purpose and questioning the volume and flow rate for the claimed purpose. The Water Court added the State of Montana as a party to assist with resolution of these remarks. No other parties objected to these claims.

On July 27, 2021, the City of Havre and the State of Montana filed a stipulation. Settlement agreements are subject to approval by the Water Court. Rule 17(a), W.R.Adj.R.

The stipulation between the City of Havre and the State of Montana is a settlement binding on the parties to that agreement. By approving it, this Court expresses no opinion on its enforceability by or against other parties. Likewise, this Court expresses no opinion on the information remarks referenced in the stipulation.

The stipulation did not request changes to any element of the claims, but did request the addition of three information remarks to each claim.

The issue remarks have been removed and the parties' requested information remarks have been added. These claims shall appear in the Final Decree for Basin 40J as shown on the abstracts attached to this order.

The deadlines set in the March 25, 2021 Scheduling Order are VACATED.

This case is closed.

Russ McElyea
Chief Water Judge

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER BETWEEN FRESNO RESERVOIR & WHITEWATER CREEK
BASIN 40J**

Water Right Number: 40J 196565-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: HAVRE, CITY OF
CITY HALL
PO BOX 231
HAVRE, MT 59501

Priority Date: AUGUST 21, 1898

Type of Historical Right: FILED

Purpose (Use): FLOOD CONTROL

Flow Rate: 5.00 CFS

Volume: 2,140.00 AC-FT

Source Name: BULLHOOK 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 | | SWNWSW | 17 | 32N | 16E | HILL |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

WATER RIGHT 40J 196565-00 IS FOR TEMPORARY STORAGE FOR FLOOD CONTROL PURPOSES. ALL WATER STORED UNDER THIS WATER RIGHT IS HELD FOR A LIMITED PERIOD OF TIME AND AUTOMATICALLY RELEASED TO THIS STREAM. BECAUSE THE WATER RIGHT IS FOR FLOOD CONTROL, THE RIGHT MAY NOT BE THE BASIS FOR ADMINISTRATIVE OR PRIORITY CURTAILMENT OF UPSTREAM WATER RIGHTS.

SHORT TERM STORAGE UNDER 40J 196565-00 SHOULD NOT BE CONSIDERED FOR PURPOSES OF DETERMINING AMOUNTS OF WATER OTHERWISE LEGALLY OR PHYSICALLY AVAILABLE FOR APPROPRIATION WITHIN THIS DRAINAGE.

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SWNWSW | 17 | 32N | 16E | HILL |

Diversion to Reservoir: DIVERSION # 1

Dam Height: 60.00 FEET

Depth: 30.00 FEET

Surface Area: 60.00 ACRES

Capacity: 720.00 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 | SW | 17 | 32N | 16E | HILL |
| 2 | SESE | 18 | 32N | 16E | HILL |
| 3 | N2N2NW | 20 | 32N | 16E | HILL |

Remarks:

THE POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF USE OF THIS WATER RIGHT MAY NOT BE CHANGED.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER BETWEEN FRESNO RESERVOIR & WHITEWATER CREEK
BASIN 40J**

Water Right Number: 40J 196627-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: HAVRE, CITY OF
CITY HALL
PO BOX 231
HAVRE, MT 59501

Priority Date: DECEMBER 31, 1950

Type of Historical Right: USE

Purpose (Use): FLOOD CONTROL

Flow Rate: 10.47 CFS

Volume: 2,094.00 AC-FT

Source Name: UNNAMED TRIBUTARY OF BULLHOOK CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SCOTT 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 | | NWSWSW | 17 | 32N | 16E | HILL |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

WATER RIGHT 40J 196627-00 IS FOR TEMPORARY STORAGE FOR FLOOD CONTROL PURPOSES. ALL WATER STORED UNDER THIS WATER RIGHT IS HELD FOR A LIMITED PERIOD OF TIME AND AUTOMATICALLY RELEASED TO THIS STREAM. BECAUSE THE WATER RIGHT IS FOR FLOOD CONTROL, THE RIGHT MAY NOT BE THE BASIS FOR ADMINISTRATIVE OR PRIORITY CURTAILMENT OF UPSTREAM WATER RIGHTS.

SHORT TERM STORAGE UNDER 40J 196627-00 SHOULD NOT BE CONSIDERED FOR PURPOSES OF DETERMINING AMOUNTS OF WATER OTHERWISE LEGALLY OR PHYSICALLY AVAILABLE FOR APPROPRIATION WITHIN THIS DRAINAGE.

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | NWSWSW | 17 | 32N | 16E | HILL |

Diversion to Reservoir: DIVERSION # 1

Dam Height: 60.00 FEET

Surface Area: 60.00 ACRES

Capacity: 720.00 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 | SW | 17 | 32N | 16E | HILL |
| 2 | SESE | 18 | 32N | 16E | HILL |
| 3 | N2N2NW | 20 | 32N | 16E | HILL |

Remarks:

THE POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF USE OF THIS WATER RIGHT MAY NOT BE CHANGED.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER BETWEEN FRESNO RESERVOIR & WHITEWATER CREEK
BASIN 40J**

Water Right Number: 40J 196628-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: HAVRE, CITY OF
CITY HALL
PO BOX 231
HAVRE, MT 59501

Priority Date: DECEMBER 31, 1950

Type of Historical Right: USE

Purpose (Use): FLOOD CONTROL

Flow Rate: 20.94 CFS

Volume: 8,376.00 AC-FT

Source Name: BULLHOOK 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 | | S2S2SW | 16 | 32N | 16E | HILL |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

WATER RIGHT 40J 196628-00 IS FOR TEMPORARY STORAGE FOR FLOOD CONTROL PURPOSES. ALL WATER STORED UNDER THIS WATER RIGHT IS HELD FOR A LIMITED PERIOD OF TIME AND AUTOMATICALLY RELEASED TO THIS STREAM. BECAUSE THE WATER RIGHT IS FOR FLOOD CONTROL, THE RIGHT MAY NOT BE THE BASIS FOR ADMINISTRATIVE OR PRIORITY CURTAILMENT OF UPSTREAM WATER RIGHTS.

SHORT TERM STORAGE UNDER 40J 196628-00 SHOULD NOT BE CONSIDERED FOR PURPOSES OF DETERMINING AMOUNTS OF WATER OTHERWISE LEGALLY OR PHYSICALLY AVAILABLE FOR APPROPRIATION WITHIN THIS DRAINAGE.

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | S2S2SW | 16 | 32N | 16E | HILL |

Diversion to Reservoir: DIVERSION # 1

Dam Height: 70.00 FEET

Surface Area: 197.00 ACRES

Capacity: 3,546.00 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 | | | S2S2SW | 16 | 32N | 16E | HILL |
| 2 | | | | 21 | 32N | 16E | HILL |

Remarks:

THE POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF USE OF THIS WATER RIGHT MAY NOT BE CHANGED.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER BETWEEN FRESNO RESERVOIR & WHITEWATER CREEK
BASIN 40J**

Water Right Number: 40J 196629-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: HAVRE, CITY OF
CITY HALL
PO BOX 231
HAVRE, MT 59501

Priority Date: DECEMBER 31, 1950

Type of Historical Right: USE

Purpose (Use): FLOOD CONTROL

Flow Rate: 2.95 CFS

Volume: 587.00 AC-FT

Source Name: UNNAMED TRIBUTARY OF MILK RIVER

Source Type: SURFACE WATER

ALSO KNOWN AS SADDLE BUTTE 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 | | NWNENW | 10 | 32N | 16E | HILL |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

WATER RIGHT 40J 196629-00 IS FOR TEMPORARY STORAGE FOR FLOOD CONTROL PURPOSES. ALL WATER STORED UNDER THIS WATER RIGHT IS HELD FOR A LIMITED PERIOD OF TIME AND AUTOMATICALLY RELEASED TO THIS STREAM. BECAUSE THE WATER RIGHT IS FOR FLOOD CONTROL, THE RIGHT MAY NOT BE THE BASIS FOR ADMINISTRATIVE OR PRIORITY CURTAILMENT OF UPSTREAM WATER RIGHTS.

SHORT TERM STORAGE UNDER 40J 196629-00 SHOULD NOT BE CONSIDERED FOR PURPOSES OF DETERMINING AMOUNTS OF WATER OTHERWISE LEGALLY OR PHYSICALLY AVAILABLE FOR APPROPRIATION WITHIN THIS DRAINAGE.

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | NWNENW | 10 | 32N | 16E | HILL |

Diversion to Reservoir: DIVERSION # 1

Dam Height: 60.00 FEET

Surface Area: 50.00 ACRES

Capacity: 900.00 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 | S2SESW | 3 | 32N | 16E | HILL |
| 2 | NW | 10 | 32N | 16E | HILL |

Remarks:

THE POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF USE OF THIS WATER RIGHT MAY NOT BE CHANGED.