

Montana Water Court
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40R-0002-I-2022

July 6, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
BIG MUDDY CREEK - BASIN (40R)
INTERLOCUTORY DECREE

* * * * *

CLAIMANT: Sandcreek Holdings LLC

CASE 40R-0002-I-2022

40R 30114978

OBJECTOR: United States of America (Bureau of Indian Affairs)

40R 30114980

40R 30114981

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's 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. If you file an objection, you must serve 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

Statement of the case

The United States of America (Bureau of Indian Affairs) (“BIA”) filed an objection to the priority date identified by stock claims 40R 30114978, 40R 30114980, and 40R 30114981.

Each claim received an issue remark concerning lack of the claims’ inclusion in the previous decree, and claim 40R 30114978 appeared in the Interlocutory Decree with an issue remark questioning the claim’s exempt claim status. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve objections and issue remarks. On March 21, 2022, the parties filed a Stipulation to Resolve Objections. The Stipulation did not resolve the issue remark questioning the exempt claim status of stock claim 40R 30114978. A deadline was set for claimant, Sandcreek Holdings LLC, to file information resolving the exempt claim status issue remark appearing on claim 40R 30114978. Sandcreek Holdings LLC failed to complete the issue remark resolution process for stock claim 40R 30114978. The court set a show cause filing deadline for Sandcreek Holdings LLC.

Issues

1. Should the court accept the stipulated terms?
2. Is claim 40R 30114978 an exempt right pursuant to Section 85-2-222, MCA?
3. Is the issue remark questioning the exempt status of claim 40R 30114978 resolved?
4. Is the notice issue remark on each claim concerning lack of each claim’s inclusion in the previous decree resolved?

Findings of fact

1. The priority date for each claim is December 31, 1896.
2. On April 12, 2022, an order set a filing deadline for Sandcreek Holdings LLC to resolve the exempt claim status issue remark on stock claim 40R 30114978. Sandcreek Holdings LLC failed to complete the issue remark resolution process. The Master reviewed the claim file and the DNRC's examination of the claim. A May 17, 2022 order set a filing deadline for Sandcreek Holdings LLC to show cause why the claim should not be amended as recommended by the Master to resolve the exempt claim status issue remark.
3. The historical point of diversion and place of use identified by claim 40R 30114978 should be the E2NE of Section 8, the NWSW of Section 9, and the N2S2 of Section 10, all in Township 30 North, Range 58 East, Roosevelt County.
4. Stock claim 40R 30114978, as amended by this report, is an exempt right pursuant to Section 85-2-222, MCA.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is *prima facie* proof of its content. Section 85-2-227, MCA. *Prima facie* proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the *prima facie* claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.
2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.
3. Settlement, including the documents filed by a claimant where the claimant is

the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. The Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

7. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

8. “‘Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA

9. Exempt rights are existing rights for stock or domestic use of groundwater or instream flow. Section 85-2-222(1), MCA.

Analysis

Issue 1 – acceptance of stipulated terms

The parties stipulated to a reduced priority date for each claim.

Conclusions of law

The evidence entered into the record is a reduction within the parameters of statements of claim 40R 30114978, 40R 30114980, and 40R 30114981, justifies the

modification to the claims, and resolves the BIA's objection to each claim. The stipulated terms should be accepted by the court.

Issues 2 and 3 – exempt right status; issue remark resolution

The map attached to stock statement of claim 40R 30114978 includes a reservoir within the point of diversion and place of use legal land description. DNRC's claim examination notes that the reservoir should be removed from the point of diversion and place of use so stock drink directly from the source, Sand Creek, thereby meeting the statutory definition of an exempt claim.

Sandcreek Holdings LLC's failure to provide any evidence to address or resolve the exempt claim status issue remark left information in the claim file, including DNRC's examination, as strong evidence of actual historical use.

Conclusions of law

Based on information in the claim file, DNRC's claim examination, and Sandcreek Holdings LLC's failure to comply with orders issued by the Water Master, stock claim 40R 30114978 should be amended as identified by the show cause order to resolve the issue remark concerning the claim's exempt right status.

Issue 4 – notice issue remark resolution

Stock claims 40R 30114978 (as amended by this report), 40R 30114980, and 40R 30114981 are existing rights for instream flow. The claims meet the definition of an "exempt claim." Section 85-2-222(1), MCA. In 2013 and 2017, the Montana Legislature amended § 85-2-222, MCA, and provided for the filing of exempt claims subject to specified terms and conditions. The claims are timely filed exempt claims.

The claims appeared in the Interlocutory Decree with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40R DECREE ISSUED 01/28/2010.

Water users were given the opportunity to review the claims and file an objection. The deadline to file objections has expired. The objection filed against each claim is resolved.

Conclusion of law

The notice issue remark concerning lack of the claims' inclusion in the previous decree served its purpose.

Recommendations

Stock claims 40R 30114978, 40R 30114980, and 40R 30114981 should be modified as follows to accurately reflect historical use.

PRIORITY DATE: **JANUARY 1, 1886** **DECEMBER 31, 1896**

Stock claim 40R 30114978 should be amended as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

ACRES	GOVT LOT	QTR SEC	SEC	TWP	RGE	COUNTY
		E2NE	8	30N	58E	ROOSEVELT
	NWSW	S2NE	9	30N	58E	ROOSEVELT
		S2	9	30N	58E	ROOSEVELT
		N2S2	10	30N	58E	ROOSEVELT

The issue remarks should be removed from each claim abstract.

Post Decree Abstracts of Water Right Claim accompany this report to confirm the recommendations have been implemented in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via USPS Mail

Sandcreek Holdings LLC
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Lawrence, KS 66044

Service via Electronic Mail

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WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
BIG MUDDY CREEK
BASIN 40R

Water Right Number: 40R 30114978 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:
SANDCREEK HOLDINGS LLC
PO BOX 667
LAWRENCE, KS 66044

Priority Date: DECEMBER 31, 1896

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 SAND CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2NE	8	30N	58E	ROOSEVELT
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWSW	9	30N	58E	ROOSEVELT
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		N2S2	10	30N	58E	ROOSEVELT
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
Period of Use:	JANUARY 1 TO DECEMBER 31					

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2NE	8	30N	58E	ROOSEVELT
2			NWSW	9	30N	58E	ROOSEVELT
3			N2S2	10	30N	58E	ROOSEVELT

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
BIG MUDDY CREEK
BASIN 40R

Water Right Number: 40R 30114980 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:
SANDCREEK HOLDINGS LLC
PO BOX 667
LAWRENCE, KS 66044

Priority Date: DECEMBER 31, 1896

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 UNNAMED TRIBUTARY OF SAND CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2NE	7	30N	58E	ROOSEVELT
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		W2SW	8	30N	58E	ROOSEVELT
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		E2SW	17	30N	58E	ROOSEVELT
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		E2SWSW	17	30N	58E	ROOSEVELT
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
Period of Use:	JANUARY 1 TO DECEMBER 31					
Place of Use:						

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2NE		7	30N	58E	ROOSEVELT
2		W2SW		8	30N	58E	ROOSEVELT
3		E2SW		17	30N	58E	ROOSEVELT
4		E2SWSW		17	30N	58E	ROOSEVELT

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
BIG MUDDY CREEK
BASIN 40R

Water Right Number: **40R 30114981** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:
SANDCREEK HOLDINGS LLC
PO BOX 667
LAWRENCE, KS 66044

Priority Date: DECEMBER 31, 1896

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 UNNAMED TRIBUTARY OF SAND CREEK

Source Type: SURFACE WATER

UNNAMED NATURAL LAKE

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Twp	Rge	County
1		N2NW	9	30N	58E	ROOSEVELT

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		E2SENW	9	30N	58E	ROOSEVELT
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1			N2NW	9	30N	58E	ROOSEVELT
2			E2SENW	9	30N	58E	ROOSEVELT