

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

\*\*\*\*\*

CLAIMANTS: David L. McEwen; Lenora D. McEwe;  
Bob & Doris Parsell Ranch LLC

CASE: 41N-0272-R-2022  
41N 153542-00  
41N 153543-00

**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, conclusions 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**

All water right claims that appeared in the Preliminary Decree for Willow Creek (Basin 41N) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections.

Claims 41N 153542-00 and 41N 153543-00 were consolidated into Case 41N-0272-R-2022 to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 41N 153543-00 received the following substantive issue remark:  
THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 1080.92 ACRE-FEET PER YEAR.
2. On June 16, 2022, the Court consolidated the claims and set a filing deadline for the Claimants to respond if they agreed that the suggested modification to the volume element for claim 41N 153543-00 was historically accurate. Nothing was filed by the ordered deadline.
3. On July 7, 2022, the Court sent an Order clarifying the filing deadline.
4. Each of the above-captioned claims received notice-type issue remarks during the DNRC's claim reexamination.

### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
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.
4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.
7. When resolving issue remarks, the 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. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

### CONCLUSIONS OF LAW

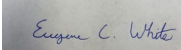
1. The information in the record is sufficient to resolve the above-listed issue remarks appearing on the claims. Because the Claimants did not respond to the filing deadline, the volume issue remark does not overcome the prima facie status of the Statement of Claim and the issue remark should be removed from the claim.

2. The notice-type issue remarks appearing on each of the claims served their notice purpose and should be removed from the claims.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

 Digitally signed  
by Eugene White  
Date: 2022.11.01  
14:44:02 -06'00'

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Eugene C. White  
Water Master

### **Service via USPS Mail:**

David L. McEwen  
Lenora D. McEwen  
1334 Coalmine Rd.  
Galata, MT 59444

Bob & Doris Parsell Ranch LLC  
1995 Miners Coulee Rd.  
Whitlash, MT 59545

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

**Water Right Number:** 41N 153542-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID L MCEWEN  
1334 COALMINE RD  
GALATA, MT 59444

LENORA D MCEWEN  
1334 COALMINE RD  
GALATA, MT 59444

**Priority Date:** OCTOBER 29, 1904

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 440.00 GPM

**Volume:** 221.00 AC-FT

THE VOLUME QUANTIFICATION ON THIS CLAIM IS THE RESULT OF A STIPULATION FILED BY THE PARTIES WITH THE WATER COURT ON 05/16/1985. THE COURT HAS MADE NO DETERMINATION AS TO THE NEED FOR A VOLUME QUANTIFICATION ON THIS CLAIM AS PROVIDED FOR IN 85-2-234 (6) (B) (III) M.C.A.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 26.00

**Source Name:** ECLIPSE GULCH

**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		NENESE	13	36N	2E	TOOLE

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

**Diversion Means:** HEADGATE

**Reservoir:** OFFSTREAM **Reservoir Name:** MACHALE RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	N2NE	13	36N	2E	TOOLE

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 10.00 FEET

**Surface Area:** 15.00 ACRES

**Capacity:** 60.00 ACRE-FEET

THIS RESERVOIR IS ALSO KNOWN AS CHRISTIAN RESERVOIR BY THE CLAIMANTS.

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

**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	10.00		NW	13	36N	2E	TOOLE
2	5.00		S2NE	14	36N	2E	TOOLE
3	11.00		N2S2	14	36N	2E	TOOLE
<b>Total:</b>		26.00					

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**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.

153504-00

153536-00

153540-00

153542-00

153547-00

153552-00

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

**Water Right Number:** 41N 153543-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID L MCEWEN  
1334 COALMINE RD  
GALATA, MT 59444

LENORA D MCEWEN  
1334 COALMINE RD  
GALATA, MT 59444

PARSELL, BOB & DORIS RANCH LLC  
1995 MINERS COULEE RD  
WHITLASH, MT 59545

TRANSFER PROCESSED TO ADD NEW OWNERS. WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

**Priority Date:** JULY 9, 1912

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.50 CFS

**\*Volume:** 1,104.00 AC-FT

THE VOLUME QUANTIFICATION ON THIS CLAIM IS THE RESULT OF A STIPULATION FILED BY THE PARTIES WITH THE WATER COURT ON 05/16/1985. THE COURT HAS MADE NO DETERMINATION AS TO THE NEED FOR A VOLUME QUANTIFICATION ON THIS CLAIM AS PROVIDED FOR IN 85-2-234 (6) (B) (III) M.C.A.

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 240.00

**\*Source Name:** ECLIPSE 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		E2SWSE	9	36N	2E	TOOLE
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	HEADGATE					
2		SWSESE	10	36N	2E	TOOLE
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
3		NWSWSE	10	36N	2E	TOOLE
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					

<b>Diversion Means:</b>	DIVERSION DAM					
4	S2SWSW	10	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	HEADGATE					
5	SESWSE	11	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
6	SESWSE	12	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
7	SWSWSE	12	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
8	SWSWSW	12	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
9	SWSWSW	12	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
10	NWNENE	13	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
11	NWNWNE	14	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
12	NENWNW	14	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
13	NWNWNW	14	36N	2E	TOOLE	
<b>Period of Diversion:</b>	APRIL 1 TO NOVEMBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					
<b>Period of Use:</b>	APRIL 1 TO NOVEMBER 1					

\*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	64.00		SE	9	36N	2E	TOOLE
2	6.00		S2S2SE	10	36N	2E	TOOLE
3	15.00		S2SW	10	36N	2E	TOOLE
4	21.00		W2W2SW	10	36N	2E	TOOLE
5	14.00		S2S2SE	11	36N	2E	TOOLE
6	44.00		S2S2	12	36N	2E	TOOLE
7	8.00		N2N2N2	14	36N	2E	TOOLE
8	3.00		N2NENE	15	36N	2E	TOOLE
9	1.00		NWNWNW	15	36N	2E	TOOLE

10		64.00	NE	16	36N	2E	TOOLE
	<b>Total:</b>	240.00					