

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

\*\*\*\*\*

CLAIMANT: Levi A. Kolstad

CASE: 41N-0267-R-2023  
41N 153309-00

**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.

Claim 41N 153309-00 received issue remarks from the DNRC and was consolidated into Case 41N-0267-R-2023 to resolve the issue remarks.

## FINDINGS OF FACT

1. Claim 41N 153309-00 received the following substantive issue remarks:

THIS CLAIM WAS INCLUDED IN A WATER COURT CASE INITIATED PRIOR TO THE ISSUANCE OF THE BASIN 41N PRELIMINARY DECREE. THE CASE WAS NOT CLOSED PRIOR TO THE ISSUANCE OF THE DECREE, THEREFORE THE ABSTRACT MAY NOT REFLECT THE CURRENT ELEMENTS OF THIS CLAIM AS ADJUDICATED BY THE COURT.

THE OWNERSHIP OF THE RIGHT MAY BE QUESTIONABLE. PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON FEDERAL LAND.

THIS CLAIM APPEARS TO BE CLAIMING THREE SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

2. On April 7, 2023, the Court consolidated the claim and ordered the Claimant to work with the DNRC to resolve the issue remarks. The deadline to file information addressing and resolving the issue remarks was extended at the request of the DNRC Havre Regional Office in an order issued by the Court on July 12, 2023.

3. On July 13, 2023, DNRC Water Resources Specialist Dixie Brough filed a *Memorandum* in this matter. The *Memo* states that the DNRC was contacted by council for the Claimant. Ms. Brough's *Memo* then states that claim 41N 153309-00 underwent multiple changes after the claim was decreed in 1984 and 2018 and was reexamined on December 14, 2012, was split between two parties on November 26, 2018, and contained a Post-Decree Water Court case in basin 41P due to its inter-basin status. Further, Ms. Brough states that, "as a result of the various processes the claim went through after reexamination...the ownership issue, general issue, and source issues were resolved." Therefore, according to Ms. Brough, the DNRC recommends the elements of claim 41N 153309-00 remain as they appear on the abstract and that the issue remarks were previously resolved.

## PRINCIPLES OF LAW

1. 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.

2. 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.

#### CONCLUSIONS OF LAW

1. The information in the record sufficiently resolves the questions regarding the above-listed issue remarks. Based on the information contained Ms. Brough's *Memo*, the elements should remain as they appear on the abstract and the issue remarks were previously removed from the claim.

#### RECOMMENDATIONS

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

A post decree abstract of the water right claim reflecting that the elements remain as they appear on the abstract prior to consolidation is attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### *Service Via Electronic Mail:*

Katie Kuhr  
Bosch Kuhr Dugdale Martin & Kaze PLLP  
PO Box 7152  
Havre, MT 59501  
kkuhr@bkdlaw.org

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

**Water Right Number:** 41N 153309-00 STATEMENT OF CLAIM  
**Version:** 5 -- POST DECREE  
**Status:** ACTIVE

**Owners:** LEVI A KOLSTAD  
 4014 WILLOW CREEK RD  
 LOTHAIR, MT 59461

**Priority Date:** DECEMBER 31, 1882

**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 WILLOW CREEK  
**Source Type:** SURFACE WATER  
 SOURCE IS COMPOSED OF MULTIPLE UNNAMED TRIBUTARTIES WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

**\*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		NESW	29	31N	4E	LIBERTY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		NENW	30	31N	4E	LIBERTY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		N2SW	30	31N	4E	LIBERTY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4	4	SWSW	30	31N	4E	LIBERTY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		NWSE	30	31N	4E	LIBERTY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		N2NW	33	31N	4E	LIBERTY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 7 SENW 33 31N 4E LIBERTY

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 8 W2SE 34 31N 4E LIBERTY

**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>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESW	29	31N	4E	LIBERTY
2			NENW	30	31N	4E	LIBERTY
3			N2SW	30	31N	4E	LIBERTY
4		4	SWSW	30	31N	4E	LIBERTY
5			NWSE	30	31N	4E	LIBERTY
6			N2NW	33	31N	4E	LIBERTY
7			SENW	33	31N	4E	LIBERTY
8			W2SE	34	31N	4E	LIBERTY

**Remarks:**

SPLIT CLAIM NO. 41N 30117645 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.