

Montana Water Court
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FILED
12/13/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
400-0002-I-2024
Lambert, Kathryn
1.00

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

* * * * *

CLAIMANT: Cornwell Ranch

CASE 400-0002-I-2024
400 30136079
400 30137775

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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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

These two claims appeared in the Interlocutory Decree with notice and issue remarks. On March 25, 2024 the State of Montana, State Board of Land Commissioners, Trust Land Management Division filed a Sworn Statement Of Non-Interest for each claim stating that it "claims no interest in this water right claim." The Sworn Statements are viewable in the scanned documents for each claim in the state's centralized record system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 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 including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. Claim 400 30136079 appeared in the Interlocutory Decree with the following remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 400 DECREE ISSUED 05/24/1995.

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. THE PLACE OF USE APPEARS TO BE ON STATE LAND.

The first remark provides notice that the claim was not included in the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

The second remark is addressed and resolved by the Sworn Statement Of Non-Interest. The remark should be removed as addressed and resolved.

2. Claim 400 30137775 appeared in the Interlocutory Decree with the following remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 400 DECREE ISSUED 05/24/1995.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 30137775, 137736-00, 137748-00, 135680-00, 137747-00, 137746-00, 202157-00.

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. THE PLACE OF USE APPEARS TO BE ON STATE LAND.

A PORTION OF THE CLAIMED POINT OF DIVERSION AND PLACE OF USE DOES NOT MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER 85-2-222, MCA, AND INVOLVES AN ON-STREAM RESERVOIR.

The first remark provides notice that the claim was not included in the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

For the second remark: when DNRC examines a claim and determines the place of use overlaps with places of use of other water right claims owned by other parties, it includes an overlapping ownership remark on the claim. An overlapping ownership remark gives parties notice and the opportunity to object to and seek modification to the place of use. If no party objects after receiving notice, no further proceedings are necessary and the issue remark may be removed. No objection was filed to pursue this possible issue. The remark should be removed without further proceedings.

The third remark is addressed and resolved by the Sworn Statement Of Non-Interest. The remark should be removed as addressed and resolved.

As the abstract states that the means of diversion for every point of diversion is LIVESTOCK DIRECT FROM SOURCE and as the abstract does not include any reservoir record, it appears the fourth remark is erroneous and should be removed without further proceedings.

CONCLUSION OF LAW

The Sworn Statements of Non-Interest, and the lack of objection to claim 400 30137775 and the clear content of its abstract, are sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Interlocutory Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK
BASIN 400

Water Right Number: 400 30136079 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: CORNWELL RANCH
PO BOX 1031
GLASGOW, MT 59230-1031

Priority Date: DECEMBER 31, 1892

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 STOCKWATERING 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:** SPRING CREEK

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF SPRING CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2W2	15	32N	39E	VALLEY

Source Name: SPRING CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NWNE	15	32N	39E	VALLEY
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***Source Name:** UNNAMED TRIBUTARY OF SPRING CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		SWSESE	15	32N	39E	VALLEY
---	--	--------	----	-----	-----	--------

***Source Name:** UNNAMED TRIBUTARY OF SPRING CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		E2NW	15	32N	39E	VALLEY
---	--	------	----	-----	-----	--------

***Source Name:** UNNAMED TRIBUTARY OF SPRING CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

5 SESWNW 15 32N 39E VALLEY

***Source Name:** UNNAMED TRIBUTARY OF SPRING CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

6 N2 22 32N 39E VALLEY

***Source Name:** UNNAMED TRIBUTARY OF SPRING CREEK

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			W2W2	15	32N	39E	VALLEY
2			NWNE	15	32N	39E	VALLEY
3			SWSESE	15	32N	39E	VALLEY
4			E2NW	15	32N	39E	VALLEY
5			SESWNW	15	32N	39E	VALLEY
6			N2	22	32N	39E	VALLEY

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK
BASIN 400

Water Right Number: 400 30137775 STATEMENT OF CLAIM

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***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: DRY FORK CREEK

Source Type: SURFACE WATER

Source Name: UNNAMED TRIBUTARY OF DRY FORK CREEK

Source Type: SURFACE WATER

Source Name: UNNAMED TRIBUTARY OF CHERRY CREEK

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF PORCUPINE CREEK, WEST FORK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SW	9	33N	39E	VALLEY

Source Name: UNNAMED TRIBUTARY OF DRY FORK CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SW	16	33N	39E	VALLEY
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***Source Name:** UNNAMED TRIBUTARY OF PORCUPINE CREEK, WEST FORK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		NWNW	16	33N	39E	VALLEY
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Source Name: UNNAMED TRIBUTARY OF DRY FORK CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4	SW	21	33N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
5	NWNW	21	33N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
6	E2SW	20	33N	39E	VALLEY
Source Name:	DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
7		20	33N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	NENENW	29	33N	39E	VALLEY
Source Name:	DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	E2	29	33N	39E	VALLEY
Source Name:	DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
10		29	33N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
11		28	33N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
12	S2SW	28	33N	39E	VALLEY
Source Name:	DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
13	W2	27	33N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
14	E2NE	32	33N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				

Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
15	NW 33 33N 39E VALLEY
Source Name:	DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
16	N2 33 33N 39E VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
17	N2 34 33N 39E VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
18	SE 6 32N 40E VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
19	SW 7 32N 40E VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
20	E2 7 32N 40E VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
21	18 32N 40E VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
22	18 32N 40E VALLEY
Source Name:	DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
23	19 32N 40E VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
24	W2SW 1 32N 39E VALLEY
Source Name:	DRY FORK CREEK
Period of Diversion:	JANUARY 1 TO DECEMBER 31

Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
25		1	32N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
26	E2	2	32N	39E	VALLEY
Source Name:	DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
27		2	32N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
28		3	32N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
29		10	32N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
30		11	32N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
31		12	32N	39E	VALLEY
Source Name:	DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
32		12	32N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
33	E2E2	15	32N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
34		14	32N	39E	VALLEY
Source Name:	UNNAMED TRIBUTARY OF DRY FORK CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
35		13	32N	39E	VALLEY

Source Name: UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
36 NENENE 13 32N 39E VALLEY
Source Name: DRY FORK CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
37 24 32N 39E VALLEY
Source Name: UNNAMED TRIBUTARY OF DRY FORK CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
38 SWNW 24 32N 39E VALLEY
Source Name: UNNAMED TRIBUTARY OF CHERRY CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
39 S2 24 32N 39E VALLEY
Source Name: UNNAMED TRIBUTARY OF CHERRY CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
40 23 32N 39E VALLEY
Source Name: UNNAMED TRIBUTARY OF CHERRY CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
41 NENE 23 32N 39E VALLEY
Source Name: UNNAMED TRIBUTARY OF DRY FORK CREEK
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			SW	9	33N	39E	VALLEY
2			SW	16	33N	39E	VALLEY
3			NWNW	16	33N	39E	VALLEY
4			SW	21	33N	39E	VALLEY
5			NWNW	21	33N	39E	VALLEY
6			E2SW	20	33N	39E	VALLEY
7				20	33N	39E	VALLEY
8			NENENW	29	33N	39E	VALLEY
9			E2	29	33N	39E	VALLEY
10				29	33N	39E	VALLEY
11				28	33N	39E	VALLEY
12			S2SW	28	33N	39E	VALLEY
13			W2	27	33N	39E	VALLEY

14	E2NE	32	33N	39E	VALLEY
15	NW	33	33N	39E	VALLEY
16	N2	33	33N	39E	VALLEY
17	N2	34	33N	39E	VALLEY
18	SE	6	32N	40E	VALLEY
19	SW	7	32N	40E	VALLEY
20	E2	7	32N	40E	VALLEY
21		18	32N	40E	VALLEY
22		18	32N	40E	VALLEY
23		19	32N	40E	VALLEY
24	W2SW	1	32N	39E	VALLEY
25		1	32N	39E	VALLEY
26	E2	2	32N	39E	VALLEY
27		2	32N	39E	VALLEY
28		3	32N	39E	VALLEY
29		10	32N	39E	VALLEY
30		11	32N	39E	VALLEY
31		12	32N	39E	VALLEY
32		12	32N	39E	VALLEY
33	E2E2	15	32N	39E	VALLEY
34		14	32N	39E	VALLEY
35		13	32N	39E	VALLEY
36	NENENE	13	32N	39E	VALLEY
37		24	32N	39E	VALLEY
38	SWNW	24	32N	39E	VALLEY
39	S2	24	32N	39E	VALLEY
40		23	32N	39E	VALLEY
41	NENE	23	32N	39E	VALLEY