

Montana Water Court
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**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

* * * * *

CLAIMANT: Bruce Lake House LLC

OBJECTOR: United States of America (Department of Interior
Bureau of Reclamation)

CASE 41I-0026-R-2023

41I 359-00

41I 360-00

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

Statement of the Case

Claims 41I 359-00 and 41I 360-00 are domestic claims owned by Bruce Lake House LLC. The United States Bureau of Reclamation (United States) objected to claim 41I 359-00 based on non-perfection. The claims also received issue remarks.

On June 26, 2024, the United States filed a motion for summary judgment. Bruce Lake House LLC is not permitted to file a response because they did not obtain counsel pursuant to Rule 16(c), W.R.Adj.R.

Principles of Law

Summary Judgment

Summary judgment is proper only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Watkins Trust v. Lacosta*, 2004 MT 144, ¶16, 321 Mont. 432, 92 P.3d 620 (citing M.R.Civ.P. 56(c)). To determine the existence or nonexistence of a genuine issue of material fact, the Court will look to the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *Lee v. USAA Cas. Ins. Co.*, 2001 MT 59, ¶ 24, 304 Mont. 356, 22 P.3d 631. All reasonable inferences that might be drawn from the offered evidence should be drawn in favor of the party opposing the summary judgment motion. *Lee*, ¶ 25.

The party seeking summary judgment has the burden of demonstrating an absence of genuine factual issues. *Id.* Proof is required to establish the absence of genuine issues of material fact; a party may not rely on the arguments of counsel. *Montana Metal Buildings, Inc. v. Shapiro*, 283 Mont. 471, 476, 942 P.2d 694, 697 (1997). Where the moving party is able to demonstrate that no genuine issue of material fact remains in dispute, the burden shifts to the party opposing the motion. *Lee*, ¶ 26. To raise a genuine issue of material fact, the party opposing summary judgment must “present material and substantial evidence, rather than merely conclusory or speculative statements.” *Id.*

Discussion

Claims 41I 359-00 and 41I 360-00 are for a private cabin site on the shoreline of the Bureau of Reclamation’s Canyon Ferry Reservoir, a federal storage reservoir. Claim 41I 359-00 asserts a right to pump water from the reservoir for domestic use at the cabin site. Claim 41I 360-00 asserts a right to a groundwater well.

The United States filed a Motion for Summary Judgment seeking termination of

claim 41I 359-00 based on non-perfection. The Motion was supported by the Declaration of Kraig S. Van Voast, who attached exhibits from Department of Natural Resources and Conservation claim files, maps, and other Reclamation documents.

The undisputed facts demonstrate that claim 41I 359-00 involves the diversion of water stored by the United States in Canyon Ferry Reservoir pursuant to Reclamation's water rights. This water is not made available for further appropriation by private individuals or entities although the United States authorizes some uses by contract. These facts are established by the record and demonstrate that claim 41I 359-00 does not describe a separate appropriation of the natural flow of the Missouri River, which is not accessible from the point of diversion or place of use.

Claimant has not obtained counsel and was not permitted to make filings in response to the United States' Motion for Summary Judgment. Nor are there material disputed facts in the record showing there is a genuine issue for trial.

Accordingly, the United States is entitled to judgment as a matter of law that claim 41I 359-00 was never perfected.

Claim 41I 360-00 received the following issue remark:

THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM ON 11/07/1996 STATING THAT THE SUBDIVISION NAME SHOULD BE "CANYON FERRY MAGPIE EAST/WEST". THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

The evidence before the Court supports the issue remark.

Recommendations

1. The Court should grant the United States's Motion for Summary Judgment.
2. Claim 41I 359-00 should be dismissed.
3. The subdivision name on claim 41I 360-00 should be corrected to "Canyon Ferry Magpie East/West."

A post decree abstract of each water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Bruce Lake House LLC
13436 Tuscalee Way
Draper, UT 84020-8868

Service via Electronic Mail

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I

Water Right Number: 411 359-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BRUCE LAKE HOUSE LLC
13436 TUSCALEE WAY
DRAPER, UT 84020-8868

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: MISSOURI RIVER (CANYON FERRY LAKE)

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 360-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BRUCE LAKE HOUSE LLC
13436 TUSCALEE WAY
DRAPER, UT 84020-8868

Priority Date: JANUARY 31, 1960

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***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		SWSNW	11	10N	1W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: CANYON FERRY MAGPIE EAST/WEST TRACT/LOT: 136

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	0.50		SESWNW	11	10N	1W	LEWIS AND CLARK

Subdivision: CANYON FERRY MAGPIE EAST/WEST TRACT/LOT: 136

Total: 0.50

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.

359-00

360-00