

Montana Water Court
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FILED
07/23/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41P-0403-P-2024
Block, Nathaniel
1.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MARIAS RIVER - BASIN 41P

CLAIMANTS: Christine M. Lakey; Mark W. Lakey

CASE 41P-0403-P-2024
41P 156699-00

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

Claim 41P 156699-00 appeared in the Preliminary Decree for the Marias River (Basin 41P) and was decreed with the following issue remark:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41P 113506-00, 156699-00.

Claim 41P 113506-00 was dismissed on April 29, 2021. Accordingly, the flow rate for claim 41P 156699-00 does not exceed that claimed by the underlying notice of appropriation.

Claim 41P 156699-00 is hereby consolidated into Water Court Case 41P-0403-R-2024 for the purposes of this Master's Report.

FINDINGS OF FACT

1. The issue remark has been resolved as the flow of the original appropriation is no longer overclaimed.
2. The issue remark should be removed from the claim.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R. 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.

CONCLUSIONS OF LAW

1. The claim should be decreed with the elements as they appeared in the Preliminary Decree.
2. The issue remark on the claim should be removed as discussed above.

RECOMMENDATIONS

1. The issue remark should be removed from the claim for the reasons discussed above and the claim should be decreed with the elements as they appeared in the Preliminary Decree.

A Post Decree Abstract of Water Right Claim is attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Christine M. Lakey
Mark W. Lakey
PO Box 371
Chester, MT 59522-0371

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MARIAS RIVER
BASIN 41P**

Water Right Number: 41P 156699-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: CHRISTINE M LAKEY
PO BOX 371
CHESTER, MT 59522-0371

MARK W LAKEY
PO BOX 371
CHESTER, MT 59522-0371

Priority Date: NOVEMBER 10, 1903

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.52 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 40.00

Source Name: HORSE 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		NESENW	32	34N	5E	LIBERTY

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

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	18.00		SWNE	32	34N	5E	LIBERTY
2	3.00		NESENW	32	34N	5E	LIBERTY
3	19.00		NESE	32	34N	5E	LIBERTY

Total: 40.00