

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MILK RIVER ABOVE FRESNO RESERVOIR (BASIN 40F)
INTERLOCUTORY DECREE

CLAIMANT: Skierka & Sons Co.

OBJECTOR: Blackfoot Tribe

40F-0004-I-2023
40F 30129414
40F 30129416

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

The Blackfoot Tribe filed an objection to all elements of stock claims 40F

30129414 and 40F 30129416.

The claims appeared in the Interlocutory Decree with a notice issue remark concerning the lack of their inclusion in the previous 40F decree. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination.

On February 7, 2024, the parties filed a Stipulation for the Resolution of Objections.

Montana law requires the Water Court to resolve objections and issue remarks.

Issues

1. Are the objections resolved?
2. Is the notice issue remark on each claim resolved?

Findings of fact

1. The Preliminary Decree abstracts for stock claims 40F 30129414 and 40F 30129416 identify their historically accurate elements.

2. The parties stipulated that “Claimant agrees to access the water source at issue in this case from only their own fee patent property, and not the Blackfeet Tribe’s property.”

3. Based upon the parties’ agreement, the following information remark should appear at the end of each abstract, “Claimant agrees to access the water source from their own fee patent property, and not the Blackfeet Tribe’s property.”

Principles of law

1. A properly filed Statement of Claim for an exempt claim is prima facie proof of its content. Section 85-2-222(3), MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. 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 demonstrates the fact to be proved is "more probable than not."

Hohenlohe v. State, 2010 MT 203, ¶33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. When resolving issue remarks, the Montana 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.

5. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

6. The Water Court may add clear and unambiguous information remarks to a claim abstract that describe historical use and reduce the possibility of future conflict. *See Clark Fork Coalition v. Hirsch*, 2014 Mont. Water LEXIS 15 at **10-14 (Oct. 29, 2014).

Analysis

Issues 1 and 2 – resolution of objections and issue remark

The parties stipulated that no changes should be made to the claims. The addition of the information remark is supported by the parties' agreement.

The stipulation may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 7.00.

The claims appeared in the Interlocutory Decree with the following issue remark:
THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40F DECREE ISSUED 12/12/2013.

Water users were given the opportunity to review the claims and file an objection. The deadline to file objections expired. These proceedings resolve the only objection filed to the claims.

Conclusions of law

The information remark reflects the stipulated agreement of the parties; concerning access to the source, describes historical use, and reduces the possibility of future conflict. The information remark should be added to each claim abstract. The Stipulation should be accepted by the court thereby resolving the Blackfeet Tribe objections.

The referenced issue remark served its notice purpose.

Recommendations

Stock claims 40F 30129414 and 40F 30129416 accurately reflect historical use. No changes to the elements of the claims should be made. The following information remark should be added to each abstract.

CLAIMANT AGREES TO ACCESS THE WATER SOURCE FROM THEIR OWN FEE PATENT PROPERTY, AND NOT THE BLACKFEET TRIBE'S PROPERTY.

The notice issue remark should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Skierka & Sons Co
162 Brown Rd
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Service via Electronic Mail

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER, ABOVE FRESNO RESERVOIR
BASIN 40F

Water Right Number: 40F 30129414 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SKIERKA & SONS CO
162 BROWN RD
BROWNING, MT 59417-8218

Priority Date: JULY 1, 1930

***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:** TOAD LAKE

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		SWSW	32	35N	12W	GLACIER

***Period of Diversion:** APRIL 1 TO NOVEMBER 30

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

***Period of Use:** APRIL 1 TO NOVEMBER 30

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			SWSW	32	35N	12W	GLACIER

Remarks:

CLAIMANT AGREES TO ACCESS THE WATER SOURCE FROM THEIR OWN FEE PATENT PROPERTY, AND NOT THE BLACKFEET TRIBE'S PROPERTY.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE BLACKFEET INDIAN RESERVATION.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER, ABOVE FRESNO RESERVOIR
BASIN 40F

Water Right Number: 40F 30129416 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SKIERKA & SONS CO
162 BROWN RD
BROWNING, MT 59417-8218

Priority Date: JULY 1, 1930

***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:** SPRING, UNNAMED TRIBUTARY OF MILK RIVER, SOUTH FORK

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		NWSE	18	34N	12W	GLACIER

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			NWSE	18	34N	12W	GLACIER

Remarks:

CLAIMANT AGREES TO ACCESS THE WATER SOURCE FROM THEIR OWN FEE PATENT PROPERTY, AND NOT THE BLACKFEET TRIBE'S PROPERTY.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE BLACKFEET INDIAN RESERVATION.