

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
WHITEWATER CREEK - BASIN (40K)
INTERLOCUTORY DECREE

CLAIMANTS: Miller Family Living Trust; Scott & Kathi Miller
Family Trust

CASE 40K-0105-I-2024
40K 30132476

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 Interlocutory Decree for the Lower Missouri River Division, Whitewater Creek Basin (40K) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 40K 30132476 received issue remarks during the DNRC’s review of the claims.

The claim was consolidated into Case 40K-0105-I-2024 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 40K 30132476 received the following substantive issue remark:
THE PRIORITY DATE MAY BE QUESTIONABLE. IT IS UNCLEAR WHETHER THE CLAIMED PRIORITY DATE IS 1914 OR 1920.
2. The priority date listed on the abstract for claim 40K 30132476 is December 31, 1914.
3. On July 9, 2024, the Water Court issued an Order Setting Filing Deadline requesting information to clarify the historically accurate priority date for claim 40K 30132476. Nothing was filed by the ordered deadline.
4. On October 15, 2024, the Court issued a second Order Setting Filing Deadline with the following language regarding the above-listed issue remark:

ORDERED that the Claimants review this Order and, *if necessary*, file information or evidence pertaining to the historically accurate priority date of claim 40K 30132476 by **Wednesday, November 20, 2024**. *If nothing is filed by the deadline, the Court will determine that the Claimants believe that the priority date should be modified to the date appearing on the patent in the claim file, the priority date will be modified to June 16, 1920, and the issue remark will be removed from the claim.*
5. Claim 40K 30132476 also received a notice-type issue remark from the DNRC denoting that the claim was not included in the previous 40K decree.

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. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
3. 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.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

CONCLUSIONS OF LAW

1. The information in the record resolves the issue remark appearing on claim 40K 30132476. Because nothing was filed at the second filing deadline by the Claimants, the issue remark overcomes the prima facie status afforded the Statement of Claim, the priority date for claim 40K 30132476 should be modified to June 16, 1920, to match the date on the patent in the claim file, and the issue remark should be removed from the claim.

2. The notice-type issue remark appearing on claim 40K 30132476 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify the priority date as described above and remove the issue remarks from claim 40K 30132476.

A post decree abstract of the water right claim reflecting the removal of the issue remarks is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Miller Family Living Trust
Scott & Kathi Miller Family Trust
% 17437 Tulsa St
17437 Tulsa St
Granada Hills, CA 91344

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Data\vol)\Share\WC-BASIN FOLDERS\40K ILT\40K Cases\105\40K-0105-I-2024 MR (single claim, no response to FD, prima facie remove IR) 10-2-24 jbc.docx

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 30132476 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MILLER FAMILY LIVING TRUST
17437 TULSA ST
GRANADA HILLS, CA 91344-4732

MILLER, SCOTT & KATHI FAMILY TRUST
C/O 17437 TULSA ST
GRANADA HILLS, CA 91344-4732

Priority Date: JUNE 16, 1920

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:** BUSCHE SPRING

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		NENESE	14	33N	32E	PHILLIPS

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			NENESE	14	33N	32E	PHILLIPS