

FILED

AUG 14 2015

Montana Water Court

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

CLAIMANT: United States of America (Bureau of
Land Management); United States of
America (Bureau of Reclamation);
Velk Farms LLC; City of Havre; Neta
M. Fordyce; Patrick R. Fordyce

CASE 400-228

- 39E 60874-00 39E 60900-00
- 39E 60877-00 39E 60908-00
- 39E 60879-00 39E 60917-00
- 39E 60884-00 39E 61223-00
- 39E 60891-00 39E 61279-00
- 39E 60896-00 39E 61286-00
- 39E 60897-00 39F 61608-00

OBJECTOR: State of Montana

ON MOTION OF THE MONTANA WATER
COURT

40J 104085-00, 40J 196565-00, 40J 196627-00, 40J 196628-00, 40J 196629-00, 40O 75189-00,
40O 76226-00, 40O 76233-00, 40O 76241-00, 40O 76245-00, 40O 76255-00, 40O 76271-00,
40O 76272-00, 40O 76280-00, 40O 76290-00, 40O 76304-00, 40O 76318-00, 40O 76327-00,
40O 76333-00, 40O 76338-00, 40O 76343-00, 40O 76351-00, 40O 76359-00, 40O 76366-00,
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40O 76883-00, 40O 76914-00, 40O 76917-00, 40O 76920-00, 40O 76943-00, 40O 76973-00,
40O 77017-00, 40O 77030-00, 40P 77453-00, 40P 77488-00, 41I 40919-00, 41S 101535-00,
41S 101536-00, and 41S 101537-00

**ORDER REJECTING MASTERS REPORT AND
ORDER SETTING SCHEDULING CONFERENCE**

I. STATEMENT OF THE CASE

This case involves water right claims for flood control. These claims fall into four groups. The first group is claims filed by the Bureau of Land Management (BLM) for

storage of water in reservoirs. The BLM filed companion stock water or fish and wildlife claims for many of the reservoirs upon which its flood control rights are based. The latter claims are not included in this case.

The second group is a single claim for flood control filed by the Bureau of Reclamation (BOR) for Canyon Ferry Reservoir. The BOR also filed a number of other water right claims for storage of water in Canyon Ferry. These claims include irrigation, hydropower, and domestic use. The latter claims are not included in this case.

The third group is water rights filed by the City of Havre. The fourth group is flood control rights filed by private individuals or entities for erosion control purposes.

The legal basis for these claims differs depending upon the entity claiming the water right and differences in federal and state law. As an example, the BLM claims are asserted pursuant to federal legislation enacted in 1935 creating the Soil Conservation Service. Soil Conservation Act of 1935, Pub. L. No. 74-46, 49 Stat. 163. Some BLM claims are also based upon notices of appropriation filed under state law, while others are based upon assertions of prior beneficial use (use rights). The BOR claim is based upon the Flood Control Act of 1944, Pub. L. No. 78-534, ch. 665, 58 Stat. 887. The City of Havre's claims are based upon Montana statutes. Claims filed by individuals are based upon assertions of prior beneficial use.

The claims in all four categories received issue remarks questioning whether flood control is a beneficial use of water under Montana law. The Water Master consolidated all these claims into a single case to address those issue remarks. The Master concluded that determining whether flood control was a beneficial use of water was a question of law and set a briefing schedule. Order Joining the State of Montana and Order Setting Briefing Schedule 2 (Sept. 13, 2012).

The claimants assert that flood control is a beneficial use of water. The State of Montana asserts that, while flood control is a beneficial activity, it is not a beneficial use of water.

The Master issued a Memorandum of Law and Master's Report concluding that, "[f]lood control is a beneficial use of water. Water right claims for flood control should

be awarded during Montana's Statewide Adjudication and should appear in Montana's water right decrees." Memorandum of Law and Master's Report 23 (Feb. 26, 2015) ("MR").

The Master's Report states that "[f]lood control is a non-consumptive use of water that provides streamflow stabilization resulting in flood prevention and source replenishment for the purpose of flood control. This use provides enormous benefits to all water users and the public at large." MR 15.

The Master's conclusion that flood control is a beneficial use was premised on the capture of flood waters in reservoirs and subsequent use of that water by the public and other appropriators. "A water right for flood control gives everyone on the source more security and protection." MR 17. The Master concluded that the public and other appropriators are entitled to use flood waters once they are impounded and converted to storage. To facilitate this use, the Master concluded that water impounded in storage reservoirs must be released when downstream rights are not being satisfied. MR 20.

After concluding that flood control was a beneficial use of water, the Master removed issue remarks on most claims in this case and determined that "these claims are valid appropriations and should be included in the Water Court's decrees." MR 25.

The Master's Report also states that flood control claims by the City of Havre are valid and based on Montana statutes authorizing cities to undertake flood control projects. MR 17.

The State of Montana objected to the Master's Report. The State contends that flood control, though beneficial, is not a use of water. Instead, it contends that flood control is an effort to get rid of unwanted water by manipulating the timing and location of such flows. The State argues that such diversions are not a beneficial use of water, and that water rights exclusively for flood control should not be recognized.

The State argues that uses of impounded flood waters for purposes such as irrigation should be recognized as irrigation rights rather than as rights for flood control. The State objects to the Master's conclusion that downstream seniors have a right to demand releases of water stored in reservoirs by upstream juniors.

The State also argues that Montana statutes authorizing cities to build flood control projects do not authorize appropriation of water rights for flood control.

The United States and other parties contend that flood control is a beneficial use of water.

Whether flood control constitutes a beneficial use of water is an issue of first impression in Montana.

II. ISSUES

1. Is determining beneficial use a question of law or fact?
2. Was the Water Master's finding that flood control is a beneficial use supported by substantial evidence?
3. Are downstream appropriators entitled to call for release of water stored in priority pursuant to a valid water right?
4. Do Montana's Flood Plain and Floodway Management Act and statutes regarding conservancy districts authorize appropriation of water rights for flood control?

III. ANALYSIS

1. Is determining beneficial use a question of law or fact?

Most western jurisdictions hold that determining beneficial use is a question of fact. "What is beneficial use, after all, is a question of fact and depends upon the circumstances in each case." *Denver v. Sheriff*, 105 Colo. 193, 204, 96 P.2d 836, 842 (1939). "[T]he determination of beneficial use is a question of fact." *Jicarilla Apache Tribe v. United States*, 657 F.2d 1126, 1133 (10th Cir. 1981) *superseded by statute on other grounds*, Act of Dec. 29, 1981, §5 Pub. L. 97-140; 95 Stat. 1717. "The beneficial use controversy here was essentially a question of fact... ." *United States v. Alpine Land & Reservoir Co.*, 697 F.2d 851, 856 (9th Cir. 1983). "[B]eneficial use determinations rely heavily on the facts and circumstances of each case, with the underlying facts varying significantly in each dispute." *Butler, Crockett & Walsh Dev. Corp. v. Pinecrest Pipeline Operating Co.*, 2004 UT 67, ¶ 45, 98 P.3d 1. "[T]he amount of water necessary for beneficial use is a question of fact in each particular case." *Wetherill v. Brehm*, 207 Cal. 574, 580, 279 P. 432 (1929).

Montana case law is less direct, but reaches the same point. “The question of the amount of water necessary per acre for irrigation is one of fact for the court or jury, and can never be considered a question of law for the courts.” *Worden v. Alexander*, 108 Mont. 208, 213 (1939) (quoting *Tucker v. Missoula Light & Railway Co.*, 77 Mont. 91, 108, 250 P. 11, 18 (1926)). “There can be no exact uniform rule for computing the duty or reasonable quantity of water for irrigation to be applied in all cases alike.” *Worden*, 108 Mont. at 213-214.

The Master’s Report framed the issue of beneficial use as a legal question, not a factual enquiry driven by evidence regarding use of a specific right. That conceptual enquiry asked generally whether flood control could be considered a beneficial use. The result was enunciation of a broad rule that flood control is a beneficial use, and that water rights for flood control are therefore valid. Based on that rule, the majority of the one hundred water rights in this case were confirmed as valid without further analysis.

The question raised by the issue remarks in this case is whether the individual flood control claims before the Court were valid water rights perfected under Montana law.

In general, courts should “decide concrete cases and not abstract propositions of law.” *Upjohn Co. v. United States*, 449 U.S. 383, 386 (1981). In the spirit of *Upjohn*, this Court declines to lay down a broad rule to govern all conceivable future questions regarding water rights for flood control. Applying this principle, the determination of whether flood control is a beneficial use should be made by assessing individual claims made for that purpose, rather than by making an abstract pronouncement of public policy. Without development of an adequate factual record, it is premature to conclude that the claims in this case are either valid or invalid simply because they are based on flood control.¹

¹ The exception is claims based on state law as discussed below.

2. Was the Water Master's finding of fact that flood control is a beneficial use supported by substantial evidence?

Although the Master decided that determining beneficial use was a question of law, Finding of Fact 3 stated that "flood control is a beneficial use of water." MR 24. No evidentiary hearing preceded the Master's Report, which states "there was no question concerning the factual basis for these claims." MR 2.

The only references to the record were general, and unconnected to specific water rights. As an example, the Master's Report refers to a declaration by BOR's expert, Scott Guenther. That declaration asserts that operation of Canyon Ferry Reservoir has prevented more than \$211 million in flood damages since 1950. However, given that BOR has also claimed all the storage capacity of Canyon Ferry for other uses such as hydropower and irrigation, it is not clear how credit should be allocated among these rights for prevention of flood damages. Moreover, BOR asserts flood damages were avoided in every year of operation between 1950 and 2011, including years of drought and low flows. In contrast, BOR agreed during oral argument that its flood right can only be diverted in times of flood, which it defined to be flows in excess of 25,000 cfs at the Ulm gauging station. Accordingly, it is impossible to determine what benefits, if any, should be assigned to the BOR's flood control right. It is also impossible to properly assess whether the claimed elements of that right, such as volume, flow, and period of use,² are consistent with historical usage or otherwise meet the requirements of beneficial use.

Similar considerations apply to the limited information regarding BLM claims. Although the BLM asserts that its numerous claims were filed to prevent erosion and flood damages and to stabilize stream flows, there is insufficient evidence that any of the reservoirs at issue achieved that purpose, and if so, to what extent. And, unlike the BOR claim, there is no information indicating what constitutes a flood on the sources claimed, or how often such floods have occurred or been prevented, if at all.

² It is not clear why BOR needs a year round period of use if flood flows only occur during spring runoff.

There was no evidence cited in the Master's Report to support a finding that any of the individual flood control claims in this case were valid. Instead, validity was presumed based on a perception that flood control amounts to a beneficial use of water. As noted above, determining whether a right is a beneficial use of water requires evaluation of evidence specific to that claim.

Irrigation claims provide an instructive example. While irrigation is generally recognized as beneficial, not all irrigation claims are beneficial uses of water. There are several cases which establish that the waste of water is not a beneficial use.

In a Montana case, the court declined to issue an injunction in favor of a plaintiff who was wasting irrigation water:

the right in water is limited to reasonable necessity and use, and none for waste. Although the user is not bound to extraordinary diligence in means and methods of use, may proceed according to local custom [sic], he is bound to reasonable care in construction and maintenance of appliances to the end that of the vital fluid others be not unnecessarily deprived [sic].

Dern v. Tanner, 60 F.2d 626, 628 (D. Mont. 1932).

In a New Mexico case, the claimant used an artesian well for irrigation. The court found this practice to be wasteful, because water was allowed "to run uncontrolled for twenty four hours a day over grazing lands without an irrigation system." *New Mexico v. McLean*, 308 P.2d 983, ¶ 21, 308 P.2d 983 (1957). A California court found excessive transmission losses to be wasteful. *Erickson v. Queen Valley Ranch Co.*, 22 Cal. App. 3d 578, 585 (1971).

Although the claims in the foregoing cases were for irrigation, each claim was evaluated on its merits when questions of beneficial use arose. Recognition that irrigation is a beneficial use does not automatically confer validity on all irrigation claims, nor does it serve as a shield to protect unreasonable or wasteful use of water.

In determining whether a specific water right qualifies as beneficial use, courts also compare the costs and benefits of the use in question with other possible uses. A particular use "must not only be of benefit to the appropriator but it must also be a reasonable and economic use of the water in view of other present and future demands

upon the source of supply.” Frank J. Trelease, *The Concept of Reasonable Beneficial Use in the Law of Surface Streams*, 12 Wyo. L. J. 1, 16 (1957). “[T]he use cannot be ‘unreasonable’ considering alternative uses of the water.” *Alpine*, 697 F.2d at 854.

In Oregon, a use of forty second-feet of water during the irrigation season to keep debris out of electric turbines was denied, although the benefit of such a use to the appropriator was admitted. *In re Deschutes River*, 134 Ore. 623, 667, 286 P. 563, 577 (1930). The court based its decision in part on the finding that the same water could otherwise be used to irrigate 1,600 acres of land. *Id.* In California, the use of water to exterminate gophers was denied in an area where water was scarce. *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.*, 3 Cal. 2d 489, 568, 45 P.2d 972, 1007 (1935).

Without a factual record, it is impossible to compare the relative value of the flood control water rights in this case, or the quantities claimed for those rights, to other potential uses. That comparison is especially important where, as here, Montana courts have not previously recognized water rights for flood control and some of the rights at issue are for large quantities of water. “In determining what is a reasonable quantity for beneficial uses, it is the policy of the state to require within reasonable limits the highest and greatest duty from the waters of the state. . . .” *McDonald v. State*, 220 Mont. 519, 531, 722 P.2d 598, 606 (1986) (quoting *Tulare*, 45 P.2d at 997).

The record in this case is not adequate to enable such comparisons to occur. The Master’s finding that flood control is a beneficial use was based on a recital of the conceptual benefits of flood control. There was insufficient evidence to conclude that the rights at issue in this case amounted to a beneficial use of water, that the amounts claimed for those rights were reasonable, or that they were based on historical use. Accordingly, there is insufficient information to permit removal of the issue remarks on these claims.

3. Are downstream appropriators entitled to call for release of water stored in priority pursuant to a valid water right?

The Water Master’s conclusion that flood control is a beneficial use was based on a belief that downstream users have the right to demand release of water from storage during times of shortage to fill their rights. This belief was based on a misreading of

Donich v. Johnson and related cases. *Donich v. Johnson*, 77 Mont. 229, 250 P. 963 (1926).

Donich involved the use of dams to raise the water levels of several natural lakes. The builders of the dams, who were junior to downstream users, claimed the right to store water outside the irrigation season, and the right to use that water during the irrigation season. The downstream users complained that the dams interfered with the natural flow of the streams being impounded, and that they were not receiving the full amount of their senior rights.

The *Donich* Court repeated the rule that the utmost the downstream seniors could demand “is that he who constructs and uses a reservoir shall not interfere with [the senior appropriators’] use of the natural flow in the creek to the extent of their appropriations.” *Donich*, 77 Mont. at 240. This rule was based on *Kelly v. Granite Bi-Metallic Consolidated Mining Co.*, 41 Mont. 1, 108 P. 785 (1910), an earlier case also involving stored water.

In *Kelly*, the Montana Supreme Court rejected the idea that stored water must be released to satisfy other rights. To conclude otherwise would require that “while the dams may be lawfully maintained for storage purposes, the companies must nevertheless use the stored water to keep up the flow of the stream for the benefit of the ditch owners, before they are entitled to divert any to their own uses.” *Kelly*, 41 Mont. at 12. “The most that the ditch owners are entitled to claim at any time is that the amounts to which they are respectively entitled shall flow to the headgates of their ditches. They are entitled to nothing more.” *Id.* The ditch owners in *Kelly* were only entitled to the natural flow of the source, and not the water that had been legally stored by reservoir operators upstream.

This rule was reaffirmed in cases subsequent to both *Donich* and *Kelly*. In *Federal Land Bank v. Morris*, the Court noted that “he who saves something that would otherwise be lost is not only to be protected in what he has saved, but commended for so doing.” 112 Mont. 445, 456, 116 P.2d 1007, 1011 (1941). The Court also noted that: “[t]he prior appropriator further has no right to waters brought into the stream exclusively

by the labor or artificial works of another man who has not intended to abandon them, for such artificial increments are not part of the natural flow.” *Id.*

The distinction between stored water and natural flow is important, because it clarifies the rights of parties claiming rights for storage and parties claiming rights to natural flow. Downstream appropriators are entitled to the natural flow of a stream at their diversions when needed to exercise their senior rights, but they cannot demand release of water from storage when natural flows are unavailable. To hold otherwise would render storage rights meaningless.³

It is precisely because natural flows can be inadequate or unpredictable that water is stored. Once water is stored in priority, it is no longer considered part of the natural flow of the source, and is available exclusively for distribution and use by the reservoir operator. At oral argument for this case, even the parties claiming flood control rights agreed that water stored pursuant to a valid water right is not subject to a call by downstream users.

The Water Master ruled that under *Donich*, owners of storage rights “would be required to release the amount of natural flow that a downstream senior appropriator is entitled to, even if the water had already been stored.” MR 20. This statement does not distinguish between natural flow and storage water, and is not the rule in Montana. To uphold such a rule would paradoxically authorize reservoir operators to divert and store water in priority, but force them to release it for the benefit of others once stored. Under this rule, the benefits of storage would be enjoyed by those making no investment in the creation of storage, while the risks would be allocated to those those who did.

Nevertheless, it was the perceived availability of stored flood waters to downstream users that drove, at least in part, the Master’s conclusion that flood control was so widely beneficial, and that flood rights were valid *per se*. This Court cannot adopt either conclusion.

³ The DNRC applies the same rule to new appropriations. ARM 36.12.113(2) (“Senior water users are not entitled to water that has been legally stored.”).

4. Do Montana’s Flood Plain and Floodway Management Act and statutes regarding conservancy districts authorize appropriation of water rights for flood control?

The Master’s Report concluded that the Flood Plain and Floodway Management Act and statutes authorizing formation of conservancy districts recognize flood control as a beneficial use of water. MR 13-14, 22.

“It is well-established that the interpretation and construction of a statute or rule is a matter of law....” *State v. Dist. Court of the Eighteenth Judicial District of Montana*, 2010 MT 263, ¶ 31, 358 Mont. 325, 246 P.3d 415. Because statutory interpretation is a matter of law, that portion of the Master’s Report interpreting the Flood Plain and Floodway Management Act and conservancy district statutes is reviewed for correctness.

The Flood Plain and Floodway Management Act is found at Section 76-5-101, MCA et. seq. Pursuant to the Act, cities are authorized to build flood control projects to:

deepen, widen, straighten, alter, change, divert, or otherwise improve the watercourses within or without their limits by constructing levees, dikes, embankments, structures, impounding reservoirs, or conduits and improve, widen, and establish streets, alleys, and boulevards across and adjacent to the abandoned or new channel or conduit ...

Section 76-5-1102, MCA.

The purpose of such projects is:

- (a) for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of floodwater; and
- (b) for the conservation, development, storage, distribution, drainage, and utilization of water for purposes beneficial to the district.

Section 76-5-1101, MCA.

The term “purposes beneficial to the district” is defined to include “industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use, and pollution abatement....” *Id.*

There is no indication the Legislature intended the term “purposes beneficial to the district” to have the same meaning as “beneficial use.” The latter term is separately defined by statute at Section 85-2-102(4)(a), MCA as part of the Water Use Act. Had the

Legislature intended the two terms to be synonymous, it could have used the same definition in both Acts.

Moreover, neither Act mentions flood control as a beneficial use giving rise to a water right. Had the Legislature intended to recognize water rights for flood control as protectable property interests, it could have inserted such language into either statute.

Similar analysis applies to conservancy district statutes. Section 85-9-101, MCA outlines the policy considerations behind formation of conservancy districts. One of the purposes of conservancy districts is to “provide for the greatest beneficial use of water within this state....” Section 85-9-101, MCA. Uses enumerated as beneficial included, but were not limited to: “domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.” Section 85-9-102(6). While the list of beneficial uses in the statute is not exclusive, flood control was not among them.

The omission of flood control from the list is significant because the purpose of the statute was to address flood control. The Legislature could have identified flood control as a beneficial use if it felt such rights were needed to effectuate the purpose of the statute. This omission suggests the Legislature understood the distinction between simply diverting flood water, and diverting flood water with a plan to conserve it for beneficial use.

The distinction between mere diversion, and diversion for beneficial use, has long been a part of Montana law. Diversion of water alone does not give rise to a water right. *Power v. Switzer*, 21 Mont. 523, 529, 55 P. 32, 35 (1898). Beneficial use, not diversion or impoundment alone, is “the basis, the measure, and the limit” of a water right in Montana. *McDonald*, 220 Mont. at 530 (emphasis omitted).⁴

The policy objectives of conservancy district statutes indicate the Legislature did not intend that flood waters be impounded without contemplation of later beneficial use. These policy objectives included avoiding erosion and flood damage, and conservation

⁴ A Montana Water Court decision determined that statutes applicable to the State Water Conservation Board entitled it “to store water simply for the sake of storing it.” Master’s Report, Case 41G-109, at 5, Aug. 13, 1993. The Court declines to adopt that rationale here.

and use of flood waters for beneficial purposes. Recognition of a water right solely for flood control might avoid flood damage, but such a right alone would not address the equally important objective of conserving water for other beneficial uses.

Nevertheless, a Colorado case is cited in the Master's Report for the proposition that flood control is a beneficial use of water. In considering a Colorado statute similar to the Montana conservancy district statute, the Colorado Supreme Court stated the legislature "would not have granted conservancy districts the right to acquire a water right for the purpose of preventing floods unless it considered flood prevention a beneficial use of water." *Pueblo West Metro. Dist. v. Se. Colo. Conservancy Dist.*, 689 P.2d 594, 603 (1973). This rule was announced with no analysis. Even a liberal review of the statutes cited in *Pueblo West* reveals little support for such a rule.

Pueblo West is not indicative of a trend in western states to recognize water rights for flood control. New Mexico does not require a water right for flood control. "No permit to appropriate water is required for an impoundment when the primary purpose of the impoundment is flood control...." 19.26.2.15 NMAC. In South Dakota, permits are issued for flood control projects, but only if "the project will not impair existing water rights." SDCL 46-2A-11.

California, which applies a mix of riparian and prior appropriation law, recognizes flood control as a beneficial use, "[b]ut such right of storage must necessarily be subordinate to all beneficial uses on the stream made in the exercise of riparian and prior appropriative rights." *Meridian, Ltd. v. San Francisco*, 13 Cal. 2d 424, 449-450, 90 P.2d 537, 549 (1939).

Montana statutes authorizing flood control projects do not suggest that impoundment of water for flood control alone is a beneficial use of water, nor do they authorize recognition of water rights exclusively for flood control. Accordingly, the Court declines to adopt the portions of the Master's Report reaching this conclusion.

IV. CONCLUSIONS OF LAW

1. Determining beneficial use is a question of fact.

2. The Water Master's finding that flood control is a beneficial use was not supported by substantial evidence specific to the claims at issue.

3. Downstream appropriators are not entitled to call for release of water stored in priority pursuant to a valid water right.

4. Montana's Flood Plain and Floodway Management Act and statutes regarding conservancy districts do not authorize appropriation of water rights for flood control. Water rights for flood control based on these statutes are subject to review for beneficial use like any other right.

V. ORDER

For the reasons set forth above, this Court declines to adopt the Master's Report dated February 26, 2015.

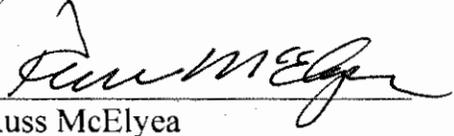
A scheduling conference for this case will be held on **Wednesday, September 9, 2015 at 10:00 AM**. The purpose of the conference will be to establish a plan for efficient resolution of the issue remarks attached to the claims before the Court. Recognizing that there are many claims, the Court's inclination is to create four sub-cases, each involving only a few representative water rights from the four categories of claims described at the beginning of this order. The parties' thoughts on this option and any other ideas they wish to propose will be solicited at the scheduling conference.

The instructions for accessing the call are as follows:

1. At the designated conference time dial the toll free telephone number:
1-877-526-1243
2. At the prompt, enter the participant pin code followed by the pound (#) key:
7685196#.
3. At the prompt state your name followed by the pound (#) key.

If you have any questions or if you experience problems placing this call you may contact the Water Court at 1-800-624-3270 (in state) or (406) 586-4364.

DATED this *14* day of *August*, 2015.


Russ McElyea
Chief Water Judge

John Chaffin
Office of the Solicitor: Billings Field Office
2021 4th Ave North, Suite 112
Billings, MT 59101
(406) 247-7058
john.chaffin@sol.doi.gov

James J. DuBois, Attorney
US Department of Justice
999 18th Street, South Terrace Suite 370
Denver, CO 80202
(303) 844-1375
james.dubois@usdoj.gov

Stephen R. Brown, Jr.
Bosch, Kuhr, Dugdale, Martin & Kaze
PLLP
PO Box 7152
Havre, MT 59501
(406) 265-6706
sbrown@bkdlaw.org

Roselyn Rennie
Office of the Solicitor
2021 4th Ave. North, Suite 112
Billings, MT 59101
(406) 247-7545
roselyn.rennie@sol.doi.gov

Neta M. Fordyce
Patrick R. Fordyce
1170 Salt Creek Rd
Hilger, MT 59451

Velk Farms, LLC
605 34th Ave SW, Unit H
Minot, ND 58701-1823

Velk Farms, LLC
Victor J. Velk, Registered Agent
PO Box 261
Havre, MT 59501

Jay Weiner
Assistant Attorney General
PO Box 201401
Helena, MT 59620-1401
(406) 444-6844
jweiner2@mt.gov

Courtesy Copy:
Anne Yates
DNRC Chief Legal Counsel
PO Box 201601
Helena, MT 59620-1601
(406) 444-6702
ayates@mt.gov

Note: Service List Updated 8/12/2015⁵

S:\Share\WC-BASIN FOLDERS\400\CASES\CASE 228\400-228 Order Rejecting MR and Setting Scheduling Conference 8-12-15 sjs.docx

⁵ Pursuant to the July 7, 2015 Order Setting Telephonic Hearing and Order Updating Service List, the Court removed all parties who were receiving courtesy copies of the orders and filings in this case. The Court stated that the parties could notify the Court in writing if they wished to remain on the service list. On July 15, 2015, Anne Yates notified the Court in writing that she wished to remain on the service list. Accordingly, Ms. Yates has been added to the service list as a courtesy copy.