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FILED

MAR 23 2017

Montana Water Court

MONTANA WATER COURT, LOWER MISSOURI DIVISION  
MILK RIVER BETWEEN FRESNO RESERVOIR AND  
WHITEWATER CREEK BASIN 40J

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CLAIMANT: United States of America  
(Bureau of Land  
Management)

**CASE 40J-560**

40J 66530-00	40J 66716-00	40J 66748-00
40J 66535-00	40J 66717-00	40J 66750-00
40J 66539-00	40J 66720-00	40J 66752-00
40J 66697-00	40J 66722-00	40J 66755-00
40J 66698-00	40J 66724-00	40J 66756-00
40J 66699-00	40J 66725-00	40J 66759-00
40J 66702-00	40J 66727-00	40J 66802-00
40J 66704-00	40J 66730-00	40J 66805-00
40J 66707-00	40J 66732-00	40J 66806-00
40J 66710-00	40J 66733-00	40J 66808-00
40J 66712-00	40J 66735-00	40J 66809-00
40J 66714-00	40J 66744-00	40J 66813-00
40J 66715-00	40J 66747-00	40J 66814-00

**NOTICE OF FILING OF MASTER'S REPORT**

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations; or if there are errors in the Report. The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report.

Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

If you file an objection, you must mail 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**  
**PROCEDURAL HISTORY**

This case involves 39 wildlife claims owned by the United States of America-Department of Interior (Bureau of Land Management) ("BLM"). These claims were filed as federal reserved rights under an Executive Order known as Public Water Reserve No. 107, dated April 17, 1926 ("PWR No. 107"). This case was originally consolidated with 50 wildlife claims, but 11 claims were subsequently removed from the case.<sup>1</sup>

The claims did not receive objections or notices of intent to appear. However, each claim received two Montana Department of Natural Resources and Conservation ("DNRC") issue remarks. The first issue remark notes the claim is based on PWR No. 107 and questions whether the claim is a federal reserved water right.<sup>2</sup> The second issue remark, typically referred to as a "Bean Lake" issue remark, states the Court will hold a hearing to determine the validity of the claim subject to Section 85-2-248, MCA, and *In the Matter of the Adjudication of the Existing Rights (Bean Lake III)*, 2002 MT 216, ¶ 10, 311 Mont. 327, 55 P.3d 396.<sup>3</sup>

Resolving the PWR No. 107 issue remark is the central issue in this case. The precedent for resolving this issue remark was set in Water Court Case 41R-200.<sup>4</sup> In 41R-

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<sup>1</sup> These claims are: 40J 65739-00, 40J 65782-00, 40J 65961-00, 40J 65963-00, 40J 66124-00, 40J 66125-00, 40J 66128-00, 40J 66131-00, 40J 66671-00, 40J 66674-00, 40J 66676-00. They were removed on March 23, 2017 because they required different or additional amendments based on the source or land status associated with each claim. They will be reconsolidated into another case at a later date.

<sup>2</sup> The issue remark reads: THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

<sup>3</sup> The issue remark reads: THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION 85-2-248, MCA, AND MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 41I, 2002 MT 216, 311 MONT. 327, 55 P.3D 396. A HEARING MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ.R. The "Bean Lake" issue remark is discussed in more detail in the Analysis section (Issue 3, b.).

200, the BLM acknowledged that PWR No. 107 did not create federal reserve water rights for wildlife purposes. The BLM then moved to amend the wildlife claims from federal reserved rights with priority dates based on the enactment of PWR No. 107 to state-based use rights with priority dates of first beneficial use. Accordingly, to resolve the PWR No. 107 issue remark on the claims in this case, a deadline was set for the BLM to file evidence establishing these claims as state-based use rights.

On April 27, 2016, the BLM filed its Notice of Filing Evidence and Verified Motion to Amend Water Right Claim (“Motion”), which sought to amend the 39 wildlife claims from federal reserved rights to state-based use rights. The Motion also requested the priority dates be corrected from April 17, 1926 to July 11, 1935. To support the Motion, the BLM included the Declaration of Frances S. Rieman and supporting exhibits.<sup>5</sup>

Additional briefing in support of the BLM’s Motion was ordered and on September 30, 2016, the BLM filed its *U.S. Bureau of Land Management’s Filing in Support of April 26, 2016 Verified Motion to Amend*. This filing included the *United States Bureau of Land Management’s Memorandum In Support of April 26, 2016 Verified Motion to Amend Claims*, the *Supplemental Declaration of Frances S. Reiman* and associated Exhibits.

### ISSUES

1. Does the BLM’s evidence establish state-based use rights for wildlife purposes? Because the BLM is asserting these wildlife claims should be corrected to state-based use rights, the elements of a state-based use right, intent, notice and beneficial use, must be to established by sufficient evidence. To answer the question of whether the BLM’s evidence is sufficient to establish these elements, the following issues must be addressed:

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<sup>4</sup> See Order Amending Claims, Removing Issue Remarks and Closing Case, *United States of America Bureau of Land Mgmt. v. State of Montana*, Water Court Case 41R-200, filed March 9, 2016.

<sup>5</sup> Ms. Rieman is employed as a Natural Resources Specialist by the United States of America-Department of Interior, Bureau of Land Management Montana-Dakotas State Office in the Division of Resources, Branch of Planning and Biological Resources. *Rieman Decl.*, ¶ 1. Ms. Rieman has been employed by the BLM since 1979 to work on Montana water adjudication and has personal knowledge of the information the BLM used in preparing its water right claims. *Rieman Decl.*, ¶ 2. Starting in March 1979, Ms. Rieman was a technician for the BLM team that compiled the information the BLM used to file its water right claims. *Supp. Decl.*, ¶ 2.

- a. Did the BLM have a bona fide intent to put the water to beneficial use?
  - b. Was notice given of the BLM's intent to put the water to beneficial use?
  - c. Did the BLM put the water to beneficial use?
2. What is the priority date of these claims?
  3. Is there sufficient evidence to resolve the issue remarks on these claims?

### **FINDINGS OF FACT**

1. All 39 wildlife claims in this case appeared in the Preliminary Decree for Basin 40J as reserved rights with an April 17, 1926 priority date based on the enactment of PWR No. 107.

2. These claims concern glacial pothole lakes on federal land managed by the BLM in remote northern areas of Blaine County near the Canadian border. *Declaration of Frances S. Rieman*, (“*Rieman Decl.*”) (dated April 26, 2016), ¶ 3; *Supplemental Declaration of Frances S. Rieman*, (“*Supp. Decl.*”) (dated September 26, 2016), ¶ 7, (see also Exhibit 2). This area is referred to as the “Prairie Pothole” region and is comprised of rolling grassland. The pothole lakes characteristic of this region are natural depressions (“potholes”) that were formed by retreating glaciers in northern Montana approximately 10,000 years ago. *Supp. Decl.*, ¶ 7. The water in the pothole lakes, which are filled from rain and drainage, are used by livestock and wildlife year-round. *Rieman Decl.* ¶ 3.

3. Wildlife are present in the Prairie Pothole region where these claims are located. Attached to the *Supplemental Declaration of Frances S. Rieman* is a portion of the United States Department of the Interior, Bureau of Land Management Prairie Pothole Environmental Impact Study (1981) (“EIS”), which in part details the wildlife in the Prairie Pothole region. *Supp. Decl.*, Exhibit 2. The diversity of habitat in the EIS area supports 145 resident and 234 migratory wildlife species, including 57 mammals, 278 birds, 13 reptiles, 6 amphibians, and 52 fish. *Supp. Decl.*, Exhibit 2. Some of the wildlife species found there include deer, antelope, sage grouse, ring-necked pheasant, and many species of waterfowl and non-game animals. *Supp. Decl.*, ¶ 8. On average, the BLM estimates that each pothole lake creates approximately 5.2 acres of wildlife habitat. *Supp. Decl.*, ¶ 8.

4. Beginning in 1937, the U.S. Fish and Wildlife Service prepared inventories of big game in Montana, and other states, with the assistance from the State wildlife agencies. Specific estimates of the mule deer, Columbian black-tailed deer, prong-horned antelope, and rocky mountain bighorn populations for the grazing districts in Montana were included in the *Big Game Inventory*, which was published in 1938. *Supp. Decl.*, Exhibit 3-excerpts.

5. The BLM's decision to file federal reserved water right claims for wildlife based upon PWR No. 107 for the "Prairie Pothole" region was based on Department of Interior Solicitor's Office guidance at the time, which indicated that in addition to several other uses, PWR No. 107 created federal reserved rights for wildlife use on unappropriated waters on public land.<sup>6</sup> *Rieman Decl.*, ¶ 4; *Department of the Interior, Solicitor's Opinion, M-36914*, 86 I.D. 553, 556, June 25, 1979. However, in 1983 after these claims were filed, Solicitor Coldiron opined that based upon *United States v. City & County of Denver* (Colo. 1982), 656 P.2d 1, PWR No. 107 did not create federal reserved rights for wildlife use. *Department of the Interior, Solicitor's Opinion, M-36914 (Supp. II)*, 90 I.D. 81, 82-84, Feb. 16, 1983.

6. Montana Grazing District No. 1 was established by public order and approved by the Secretary of the Interior on July 11, 1935.<sup>7</sup>

7. The Federal Register, pursuant to 44 U.S.C.S. § 1507 (LexisNexis, Lexis Advance through Pub. L. No. 114-30, approved July 6, 2015), provides constructive notice of congressional mandates to persons subject to or affected by the mandates.

#### APPLICABLE LAW

1. Federal entities appropriate water rights based on state law in the same way as private claimants. See 89-808, RCM (1947) (Repealed 1973); See also, *Department of the Interior, Solicitor's Opinion M-36914 (Supp. I)*, 88 I.D. 1055, 1064-65, September 11, 1981.

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<sup>6</sup>The uses listed in *Solicitor's Opinion, M-36914* are: a) stock watering, (b) human consumption, (c) agriculture and irrigation, including sustaining fish, wildlife and plants as a food and forage source, and (d) flood, soil, fire and erosion control.

<sup>7</sup> Five grazing districts were established in Montana between 1935 and 1936 under the Taylor Grazing Act.

2. The common law elements of a valid appropriation for a state-based use right in Montana were intent to appropriate a water right, notice of the appropriation, diversion and application of the water to beneficial use. *Bean Lake III*, ¶ 10; *Power v. Switzer*, 21 Mont. 523, 529-30, 55 P. 32, 35 (1898); *Toohey v. Campbell*, 24 Mont. 13, 17, 60 P. 396, 397 (1900); *Clausen v. Armington*, 123 Mont. 1, 7, 212 P.2d 440, 450 (1949).

3. The intent of a claimant is “a most important factor in determining the validity of an appropriation of water.” *Toohey*, 24 Mont. at 17. “[A]t the time of taking the initial steps [to appropriate], the claimant must have an intention to apply the water to a useful or beneficial purpose.” *Bailey v. Tintinger*, 45 Mont. 154, 178, P. 575 (1912) (citations omitted). “As every appropriation must be made for a beneficial or useful purpose ... it becomes the duty of the courts to try the question of the claimant’s intent by his acts and the circumstances surrounding his possession of the water, its actual or contemplated use and the purposes thereof.” *Toohey*, 24 Mont. at 18 (citations omitted). An appropriator’s intent “must be bona fide and not a mere afterthought.” *Bailey*, 45 Mont. at 178.

4. Under the prior appropriation doctrine, a physical diversion traditionally served two purposes, 1) providing notice of a user’s intent to appropriate water, and 2) defining the extent of the use. *Bean Lake III*, ¶ 22. However, the Montana Supreme Court rejected the requirement of a physical diversion for proof of intent for fish, wildlife and recreation claims in *Bean Lake III*. *Bean Lake III*, ¶ 20. Intent remains an essential element and “may be proven through means other than a diversion”, such as through other facts and surrounding circumstances. *Bean Lake III*, ¶ 23; *Wheat v. Cameron*, 64 Mont. 494, 210 P. 761 (1922).

5. “Beneficial use” means “a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stockwater, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.” Section 85-2-102(4)(a), MCA. Under Montana water law, the application of water to a beneficial use has always been the true test of an appropriation. *Bean Lake III*, ¶ 10 (citing *Thomas v. Guiraud*, 6 Colo. 530, 533 (1883) (“the true test of appropriation of water is the successful application thereof to the beneficial use designed, and the method of diverting or carrying the same, or making such application, is immaterial.”)).

6. The Montana Supreme Court held that fish, wildlife and recreation claims were recognized beneficial uses prior to July 1, 1973, “where the intended beneficial use did not require diversion, and when the facts and circumstances indicate that notice of the appropriator's intent had been given.” *Bean Lake III*, ¶ 40.

## ANALYSIS

### ISSUE 1

#### **a. Intent**

The BLM asserts that the United States evidenced its intent to appropriate the water in these pothole lakes for wildlife use when it established Montana Grazing District No. 1.<sup>8</sup> *Rieman Decl.*, ¶¶ 6, 7.

Grazing districts and federal management of grazing lands on the public domain began with the Taylor Grazing Act. Congress passed the Taylor Grazing Act (Pub L. No. 73-482, 48 Stat. 1269) on June 28, 1934, “in order to promote the highest use” of public grazing lands through the creation of grazing districts. Act of June 28, 1934, ch. 865, § 1, 48 Stat. 1269 (codified as amended at 43 U.S.C. § 315 (2014)).

The Taylor Grazing Act was aimed at stopping injury to the public grazing lands by preventing overgrazing and soil deterioration; providing for their orderly use, improvement, and development; and to stabilize the livestock industry dependent upon the public range. 43 U.S.C. § 315(a) (2014); *Public Lands Council v. Babbitt*, 529 U.S. 728, 733 (2000). Section 9 of the Taylor Grazing Act states the Secretary of the Interior is to, “provide, by suitable rules and regulations, for cooperation with . . . official State

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<sup>8</sup> The BLM also cites to several different pieces of legislation through which Congress has directed its agencies to manage its lands to support and enhance wildlife and habitat. These include:

Fish and Wildlife Coordination Act of 1934, (Pub. L. No. 73-112) (U.S. government agencies must consult with the Fish and Game Service and State Wildlife Agencies prior to appropriating water.)

Duck Stamp Act of 1934, (Pub. L. No. 73-124) (Raised money for the creation and maintenance of waterfowl sanctuaries.)

The Federal Aid in Wildlife Restoration Act (Pittman-Robertson Act) of 1937. (Allocated money to the States for use in wildlife management, surveys, research, and land acquisition for wildlife purposes, and was accepted by Montana legislation in 1941.)

Bankhead-Jones Farm Tenant Act of 1937 (Pub. L. No. 75-210) (Authorized federal acquisition of lands for purposes of rehabilitation, which was used to acquire land for wildlife refuges.)

agencies engaged in conservation or propagation of wildlife.” 43 U.S.C. § 315(h). The Taylor Grazing Act should not be “construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State....” 43 U.S.C. § 315(h).

Following enactment of the Taylor Grazing Act, the Secretary of the Interior established Montana Grazing District No. 1 by public order on July 11, 1935. The creation of Montana Grazing District No. 1 evidences the BLM’s intent to “aid in wildlife management” and “wildlife protection” in the “Prairie Pothole” region. *Rieman Decl.*, ¶¶ 6, 7. To protect and manage wildlife within the grazing district, the water sources also needed to be protected from future appropriation by other parties. By establishing the grazing district and directly managing for wildlife therein, the BLM evidenced its intent to appropriate water from the pothole lakes for wildlife use.

In addition, the Federal Range Code provides further evidence of the BLM’s intent to manage grazing district lands for wildlife, as well as livestock, and to appropriate water for wildlife use. The Federal Range Code, which was promulgated by the Secretary of Interior in 1938, specifically states that in each grazing district, “a sufficient carrying capacity of Federal range will be reserved for the maintenance of a reasonable number of wild game animals, to use the range in common with the livestock grazing in the district.” 43 C.F.R. § 501.5(b). The *BLM Manual, Volume IX-Range*, (1960) also includes an entire chapter regarding wildlife management on public lands and references the importance of water to wildlife management. *Supp Decl.*, ¶ 20(h), (see Exhibit 9).

**b. Notice**

The BLM asserts it gave notice of its intent to appropriate the water in these pothole lakes for wildlife use when it established Montana Grazing District No. 1. *Rieman Decl.* ¶¶ 8, 9 (see Exhibit 5). Montana Grazing District No. 1 was established by public order and approved by the Secretary of the Interior on July 11, 1935. In addition, on March 2, 1936, the Grazing Service (which was combined with the General Land Office in 1946 to create the BLM) established Rules for the Administration of Grazing Districts after a series of public meetings across the western United States were held. These Rules were later amended on June 15, 1937. Following the amendment of the



Taylor Grazing Act by the Act of June 26, 1938 (49 Stat. 1976), the rules were amended and published in 1938 as the Federal Range Code. The BLM cites to the Federal Range Code, 43 C.F.R. § 501.5(b), which specifies that sufficient carrying capacity must be reserved for the maintenance of wildlife, as giving additional notice of its intent to appropriate water from these pothole lakes for wildlife use. All of the documents referenced above appear in the Federal Register, which provides constructive notice. The foregoing facts and circumstances indicate that notice of the BLM's intent to appropriate water for wildlife use was given. *Bean Lake III*, ¶ 40.

**c. Beneficial Use**

Wildlife claims were a recognized beneficial use prior to July 1, 1973, "where the intended beneficial use did not require diversion, and when the facts and circumstances indicate that notice of the appropriator's intent had been given." *Bean Lake III*, ¶ 40.

In the Prairie Pothole region, wildlife use the water from the pothole lakes for both consumptive and non-consumptive use (habitat). *Supp. Decl.*, ¶¶ 9-11. Beneficial use can be imputed to the BLM when it began to manage these water sources to include wildlife. Wildlife have always used the water in these pothole lakes, and BLM's active management of these sources, starting with the creation of Montana Grazing District No. 1, evidences its intent to beneficially use this water for wildlife use.

**ISSUE 2**

**Priority Date**

Having established intent, notice, and beneficial use, and thus valid state-based use rights, the last question is what is the priority date for these claims. The correct priority date is the date the BLM completed its appropriations of water from these pothole lakes for wildlife use. While wildlife have used water from these pothole lakes for time immemorial, beneficial use began when it started actively managing this specific area of the federal range (including the pothole lakes) for wildlife, which as noted above was the creation of Montana Grazing District No. 1 on July 11, 1935. The creation of Montana Grazing District No. 1 also provided the BLM's intent to appropriate the water and notice was provide through the Federal Register. All the essential elements of these claims were established when Montana Grazing District No. 1 was created and is the best evidence of

when the BLM completed its appropriations. Therefore, the correct priority date for these claims is July 11, 1935.

### **ISSUE 3**

#### **a. PWR No. 107 Issue Remark**

Based upon the evidence provided by the BLM, which established these wildlife claims as valid state-based use rights, the PWR No. 107 issue remark is resolved and should be removed.

#### **b. Bean Lake Issue Remark**

The Water Right Claim Examination Rules Amended by the Montana Supreme Court, effective date December 5, 2006, address the addition of issue remarks to wildlife, recreation, and fish and wildlife claims. See Rule 27(h)(5), (6), W.R.C.E.R. If other factual or legal issue remarks are added to a wildlife, recreation, or fish and wildlife claim, the DNRC claim examiner is to add the following remark:

THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION 85-2-248, MCA, AND MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396. A HEARING MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ.R.

The above issue remark will also be added if the claim receives an objection or is called in on motion of the Water Court. The PWR No. 107 issue remark has been resolved, these claims did not receive objections or notices of intent to appear, and were not called in on motion of the Water Court. As such, the validity of these claims is no longer in question. Therefore, a hearing to determine the validity of these claims is not necessary. Consequently, the “Bean Lake” issue remark that appeared on these claims is resolved and should be removed.

#### **Associated Rights Information Remark**

In addition to the issue remarks noted above, all of these claims (except claim 40J 66732-00) appeared with an associated rights information remark. Associated rights are generally created in one of three scenarios: a statement of claim uses the same development (well, reservoir, point of diversion) as 1) a federal reserved water right

claim; 2) a new appropriation (post -1973 water right); or 3) an exempt right. The associated rights information remarks were added to the claims because they were claimed as federal reserved rights and share the same reservoirs with other BLM stock claims. However, these claims have now been amended to state law based use rights. Therefore, there is no longer a relationship between a statement of claim and a federal reserved right, as noted in scenario No. 1 above. Consequently, the associated rights information remarks should be removed from the claims.

### CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 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 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.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeyer et al. v. Burkhartsmeyer et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. 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.

4. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

5. 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.

6. 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.

7. The BLM had bona fide intent to put the water from these pothole lakes to beneficial use for wildlife when it established Montana Grazing District No. 1.

8. The BLM provided notice of its intent to appropriate wildlife rights from these pothole lakes when it established Montana Grazing District No. 1.

9. The BLM put water from these pothole lakes to beneficial use for wildlife when it created Montana Grazing District No. 1.

10. The evidence entered into the record provides a sufficient basis to establish these BLM claims as state-based use rights for wildlife purposes and to correct the type of historical right and priority date elements of the claims. The type of historical right and priority date for these claims should be corrected as follows:

Priority date: **July 11, 1935** ~~April 17, 1926~~

Type of Historical Right: **Use Reserved**

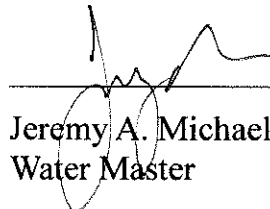
11. The evidence entered into the record is sufficient to resolve the issue remarks that appeared on the above captioned claims. The issue remarks should be removed.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin.

Post Decree Abstracts of Water Right Claim are served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

DATED this *23* day of *MARCH*, 2017.

  
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