

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
WILLOW CREEK BASIN (41N)
PRELIMINARY DECREE

CLAIMANTS: Brenda L. Harmon; William R. Harmon;
Mary Jo Harmon; Patrick R. Harmon

CASE 41N-286-R-2022
41N 156576-00
41N 156582-00

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

All water right claims that appeared in the Preliminary Decree for Willow Creek (Basin 41N) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections.

FINDINGS OF FACT

1. Claims 41N 155993-00 41N 155996-00, 41N 156576-00, and 41N 156582-00 were originally consolidated into Case 41N-0286-R-2022 to resolve the issue remarks. Claims 41N 155993-00 and 41N 155996-00 were reconsolidated in an Order issued by the Court on August 31, 2022.

2. Claims 41N 156576-00 and 41N 156582-00 each received the following substantive issue remark:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE
CONFIRMED WITH AVAILIBLE DATA.

3. On November 16, 2022, the Claimants filed a *Verified Motion to Amend* claim 41N 156582-00 by modifying the capacity of the Reservoir to 1.5-2.0 acre-feet. The *Motion to Amend* also contained a map showing the reservoir location. Nothing was filed pertaining to the reservoir for claim 41N 156576-00.

4. On March 8, 2023, the Court set a filing deadline for the Claimants to file information or evidence addressing the location of the claimed reservoir for claim 41N 156576-00. Nothing was filed by the ordered deadline.

5. On May 24, 2023, the Court set a second filing deadline for the Claimants to file information or evidence addressing the location of the claimed reservoir for claim 41N 156576-00.

6. On August 18, 2023, Claimant William Harmon filed a *Request for Extension of Time and Request to Work with DNRC* to resolve the issue remark appearing on claim 41N 156576-00.

7. Also on August 18, 2023, the Court Ordered the Claimants to work with the DNRC, under §85-2-248(5), MCA, to resolve the issue remark appearing on claim 41N 156576-00.

8. On September 5 and also on September 7, 2023, Claimants filed a *Verified Motion to Amend* claim 41N 156576-00 by correcting the legal land description of the reservoir to NWNWSW in Sec 20, Twp 36N, Rge 3E, in Toole County and to modify the capacity of the reservoir to 3.0 acre-feet.

9. On September 26, 2023, DNRC Water Resources Specialist Dixie Brough filed a *Memorandum* in this matter. The *Memo* states that the DNRC was contacted by Claimant William Harmon on August 25, August 29, and August 30, 2023. Ms. Brough's *Memo* states that after reviewing the *Motion to Amend* and Cadastral information provided by Mr. Harmon prior to the filing received by the Water Court on September 5 and 7, 2023 the DNRC recommends the modification be made as requested in the *Motion to Amend* to resolve the issue remark appearing on claim 41N 156576-00. Additionally, Ms. Brough's *Memo* included a proposed abstract showing modifications to the reservoir location, the point of diversion, and the place of use all from NENWSW in Sec 20, Twp 36N, Rge 3E in Toole County to NWNWSW in Sec 20, Twp 36N, Rge 3E in Toole County.

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. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.
3. When resolving issue remarks, the 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. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSION OF LAW

1. The information in the record is sufficient to resolve the above-listed issue remarks appearing on claims 41N 156576-00 and 41N 156582-00. Based on the information contained in the *Motion to Amend* claim 41N 156582-00 filed on November 16, 2022, a capacity of 2.0 acre-feet should be added to the reservoir for claim 41N 156582-00 to cover the requested 1.5-2.0 acre-feet. Based on the information contained in the *Motion to Amend* claim 41N 156576-00 filed on September 5 and 7, 2023, and Ms.

Brough's *Memo*, the legal land description of the reservoir, as well as the point of diversion and place of use, for claim 41N 156576-00 should be modified from NENWSW to NWNWSW in Sec 20, Twp 36N, Rge 3E, in Toole County. The modifications resolve the issue remarks, and the issue remarks should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the reservoir record, point of diversion, and place of use for claim 41N 156576-00 and the reservoir information for claim 41N 156582-00 as described in Conclusion of Law No. 1 and remove the issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Brenda L. Harmon
William R. Harmon
P.O. Box 381
Chester, MT 59522

Mary Jo Harmon
Patrick R. Harmon
P.O. Box 255
Chester, MT 59522

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 156576-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRENDA L HARMON
PO BOX 381
CHESTER, MT 59522

MARY JO HARMON
PO BOX 255
CHESTER, MT 59522

PATRICK R HARMON
PO BOX 255
CHESTER, MT 59522

WILLIAM R HARMON
PO BOX 381
CHESTER, MT 59522

Priority Date: AUGUST 1, 1940

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: UNNAMED TRIBUTARY OF ECLIPSE GULCH

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		NWNWSW	20	36N	3E	TOOLE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	20	36N	3E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Capacity: 3.00 ACRE-FEET

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			NWNWSW	20	36N	3E	TOOLE

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 156582-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRENDA L HARMON
PO BOX 381
CHESTER, MT 59522

MARY JO HARMON
PO BOX 255
CHESTER, MT 59522

PATRICK R HARMON
PO BOX 255
CHESTER, MT 59522

WILLIAM R HARMON
PO BOX 381
CHESTER, MT 59522

Priority Date: JANUARY 1, 1935

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: UNNAMED TRIBUTARY OF FOURMILE COULEE

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		SESWNW	2	35N	2E	TOOLE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWNW	2	35N	2E	TOOLE

Diversion to Reservoir: DIVERSION # 1

Capacity: 2.00 ACRE-FEET

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			SESWNW	2	35N	2E	TOOLE