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Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI RIVER DIVISION  
WHITEWATER CREEK (BASIN 40K)

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE  
PRELIMINARY DECREE OF WHITEWATER CREEK (BASIN 40K)**

The Temporary Preliminary Decree for Whitewater Creek (Basin 40K) was issued on November 21, 1989.

Since issuance of the Temporary Preliminary Decree, there have been statewide changes in how claims for fish and wildlife, wildlife, and recreation purposes are examined and decreed. There have also been statewide changes in how certain elements are decreed, such as standardization of source names and point of diversion legal descriptions. Some additional information has been added to the abstracts of claims such as ditch names, reservoir data, and periods of diversion. These changes have been incorporated on many of the abstracts in this Preliminary Decree. These changes have all been authorized by Montana Water Court Orders. *See* Amended Order on Period of Diversion – Statewide, entered December 11, 2008; Second Amended Order on Period of Diversion – Statewide, entered November 10, 2014; Order Addressing ReExamination, entered December 14, 2012; and Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims - Statewide 2013, entered April 17, 2013.

These Findings of Fact and Conclusions of Law are issued by the Chief Water Judge for inclusion in the Preliminary Decree for Whitewater Creek (Basin 40K) as authorized by §§ 3-7-224(2) and 85-2-231, MCA. These Findings of Fact and Conclusions of Law supersede and replace the Findings of Fact and Conclusions of Law for the Temporary Preliminary Decree filed by Water Master Patti Rowland and adopted by Chief Water Judge W. W. Lessley on November 21, 1989.

**FINDINGS OF FACT**  
**DESCRIPTION OF BASIN**

1. Basin 40K encompasses Whitewater Creek and its tributaries as well as groundwater located within Basin 40K. The boundaries of Basin 40K are outlined on the attached map.

**DECREE ABSTRACTS AND INDEX**

2. In addition to these Findings and Conclusions, this Decree consists of a computer CD of the abstracts of each individual water right claim decreed in this basin. Accompanying the Decree are six Indexes designed to help people research and find water rights included in the Decree. The six Indexes are as follows:

- Water Right Claim Identification Number Index
- Owner Name Index
- Priority Date Index
- Point of Diversion Index
- Source Name Index
- Issue Remark Index

3. CD copies of the Decree and six Indexes are located at the Department of Natural Resources and Conservation (DNRC) Glasgow Regional Office, the DNRC Water Rights Adjudication Office in Helena, and the Montana Water Court in Bozeman. This information is also available on the DNRC's Water Rights Adjudication webpage.

**UNRESOLVED FACTUAL AND LEGAL ISSUES**

4. The objection period provides an opportunity for interested parties to raise issues regarding their own water rights or other water rights in this decree. Issues may also be raised by the Water Court on its own initiative ("on its own motion"). *See* Rule 8, W.R.Adj.R.

Many unresolved factual and legal issues have been noted by issue remarks on the individual claim abstracts. The Issue Remark Index combines the issue remarks into one index arranged numerically by water right claim number. Searching the Issue Remark Index by water right claim number will identify all issue remarks on individual claim abstracts. Objections may be filed to claims with issue remarks. Issue remarks not resolved through the objection process will be resolved as directed by § 85-2-248, MCA.

Water users within this basin and other interested persons will be mailed a Notice of Entry of Preliminary Decree and Notice of Availability contemporaneously with the filing of these Findings and Conclusions. The Notice of Availability explains the objection process and sets a deadline for filing objections with the Water Court.

### **CONCLUSIONS OF LAW**

Based on the above Findings of Fact, the Chief Water Judge makes the following Conclusions of Law:

1. This is a general adjudication of existing water rights. An existing water right is a right to the use of water which is protected under the law as it existed prior to July 1, 1973.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. § 85-2-222, MCA (1979). These exempt rights were for stock or domestic uses from instream or groundwater sources. In 2013, the Montana Legislature created a process to file claims for existing water rights that were exempt from filing in the statewide water right adjudication. § 85-2-222, MCA. A person who claims an exempt right must file for the right no later than June 30, 2019. § 85-2-222(2)(a), MCA

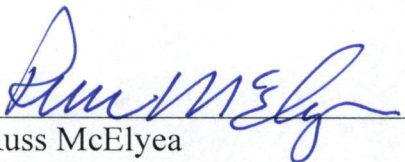
3. Claims for water rights reserved under the laws of the United States of America are included in the Montana general adjudication of water rights. The State of Montana, through the Reserved Water Rights Compact Commission, engaged in the negotiation of reserved water right compacts with the federal government and Indian Tribes. §§ 85-2-701 through 85-2-708, MCA.

4. There may be federal or Tribal reserved rights in this basin that are not reflected in this decree. Those rights will be issued in a separate decree.

5. The Montana Water Court has jurisdiction to enter a Preliminary Decree for Whitewater Creek (Basin 40K) pursuant to Title 85, Chapter 2, Montana Code Annotated. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983); and *State ex rel. Greely v. Conf. Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

6. These Findings of Fact, Conclusions of Law, and abstracts define the nature and extent of each claimed existing water right under Montana law in Basin 40K and comprise a Preliminary Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.

DATED this 7<sup>th</sup> day of March, 2019.

  
Russ McElyea  
Chief Water Judge

John Peterson  
Adjudication Bureau Chief  
Montana DNRC  
PO Box 201602  
Helena, MT 59620-1602

DNRC Glasgow Regional Office  
222 6<sup>th</sup> Street South  
PO Box 1269  
Glasgow, MT 59230-1269  
(406) 228-2561

# Basin 40K - Whitewater Creek

Text CANADA

BLAINE COUNTY  
PHILLIPS COUNTY

**Streams**

**Major Roads**

**County**

**Basin 40K Boundary**

