

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
RUBY RIVER BASIN (41C)

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IN THE MATTER OF THE ADJUDICATION OF)
THE EXISTING RIGHTS TO THE USE OF ALL)
THE WATER, BOTH SURFACE AND UNDERGROUND,)
WITHIN THE RUBY RIVER DRAINAGE AREA)
INCLUDING ALL TRIBUTARIES OF THE RUBY)
RIVER IN MADISON AND BEAVERHEAD)
COUNTIES, MONTANA)

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE
RUBY RIVER BASIN (41C)

These Findings of Fact and Conclusions of Law are
issued by the Chief Water Judge for inclusion in the Temporary
Preliminary Decree for the Ruby River Basin (41C).

FINDINGS OF FACT

1. AUTHORITY TO ACT

This Report is issued by the Chief Water Judge as
authorized by Mont. Code Ann. sec. 3-7-224(2) and 85-2-231
(1989).

2. EXISTING WATER RIGHTS

This is a general adjudication of existing water
rights. An existing water right is a right to the use of water
which would be protected under the law as it existed prior to
July 1, 1973. Mont. Code Ann. sec. 85-2-102(9) (1989).

3. RESERVED WATER RIGHTS

This Temporary Preliminary Decree does not include any
federal reserved water rights or reserved Indian water rights
which may exist in this basin. Mont. Code Ann. Sec. 85-2-231(1)

(1989). Any such rights will be included in the Preliminary Decree issued for this basin. Mont. Code Ann. Sec. 85-2-231(2) (1989).

4. SENIOR MAIN STEM WATER RIGHTS

Judicial notice is taken of the fact that water rights exist on the Missouri River main stem and on other Missouri River tributaries which may be senior to some of the rights decreed in this Ruby River Temporary Preliminary Decree. Rights decreed herein may be subject to curtailment or cessation in order to satisfy senior rights on the main stem or other tributaries of the Missouri River during times of water shortage.

5. DESCRIPTION OF BASIN

There were 2,162 claims of existing rights for irrigation, stockwater, domestic and other uses filed in the Ruby River Basin. The Ruby River is formed by drainages from the Snow Crest, Gravelly and Green Horn Ranges of mountains in the southern portion of Madison County. The Ruby flows in a northerly direction to the Beaverhead River. The boundaries of the Ruby River Basin are outlined on the attached map.

6. WATER RIGHT OWNER

A water right is decreed in the name of the claimant. If a water right transfer certificate was filed prior to issuing this decree the Court issues the right in the name of the new owner. A water right transfer certificate is "constructive notice of the content thereof" and failure to file a transfer does not affect the actual transfer of water. Mont. Code Ann.

Sec. 85-2-423 et.seq. (1983). If a transfer certificate is received by the Water Court after this Temporary Preliminary Decree has been issued, the new owner's name will appear in the subsequent decree.

Some previously decreed water rights are claimed by more than one person. When the combined flow rate of such claims exceeds the previously decreed flow rate, each claimant is decreed the claimed flow rate, but a remark is added to each right noting the conflict. This issue will be called in on Motion of the Water Court for resolution.

7. SPECIFICS OF PROCEDURE

The Water Court ordered the Montana Department of Natural Resources and Conservation to assist in the processing of the claims. Mont. Code Ann. Sec. 85-2-243 (1987). Each claim was examined for incomplete or inaccurate information.

The extent of each water right claim is further defined by these Findings of Fact and Conclusions of Law.

The specifics of each claim appear in the abstract of the water right. Each abstract of the claimed right includes (where possible):

- (a) The name and mailing address of the owner of the right;
- (b) The amount of water included in the right (all flow rates and volumes are measured at the point of diversion unless otherwise noted on the abstract);
- (c) The priority date of the right;
- (d) The purpose for which the right is used;
- (e) The place of use and a legal description of the land to which the right is appurtenant;
- (f) The source of water included in the right;
- (g) The place and means of diversion;
- (h) The inclusive dates during which the water is used each year;

- (i) Any other information necessary to define the nature and extent of the right.

Where a claimant filed two or more water rights on the same claim form, each right was separated and assigned an individual water right number. These additional claims are called "implied claims". If the claim did not include all the information required by Mont. Code Ann. sec. 85-2-224 (1985) and the information was not available, the right was decreed within the limits of the information submitted. Remarks were added to the abstracts flagging any unresolved issues. All such issues will be called in on Motion of the Water Court for resolution.

8. MULTIPLE USES OF A WATER RIGHT

Historically, a water right was decreed and the various uses of the right were noted. In this adjudication, the claimants filed separate claims for each use of the water right. Special claim forms were used for irrigation, stockwater, domestic use and a catch-all form for all other uses. As a result of this specific filing, each use of a water right will be decreed separately. Therefore, a water right might be represented by two or more decreed uses.

A remark noting the multiple use of a water right appears in the following instances:

1. Whenever an irrigation claim and an "Other Use" claim are for the same water right.
2. Whenever a water right has two or more "Other Uses."

In all cases where any multiple use of a right occurs, the combined flow rate and volume cannot exceed the original appropriation. The use of the right for several purposes does not increase the extent of the right, rather it decrees the right to alternate and interchange the use (purpose) of the water in accord with historical practices.

9. SOURCE NAME

Although some sources were claimed under several names, the source is generally designated by the name listed in the most recent United States Geological Survey quadrangle maps. If the source has not been designated by the U.S.G.S., the source name most commonly recognized in the locality may be used, or the source may be designated as an "unnamed tributary of _____" or "spring, tributary of _____."

Commonly recognized reservoir and lake names will appear as source names. Those lakes and reservoirs that have no commonly recognized name are generally decreed under the name of the outflowing stream. The Source Name Index of the Decree cross-indexes any such source names for easy access.

When more than one source is claimed for a water right, the Water Court determines the major source and lists that source in the Decree. If more than one source is determined to be major, an "implied claim" is generated for the right.

10. PRIORITY DATE

The priority date is decreed as claimed except where it is incomplete or it contradicts the claim's supporting documentation.

Priority date is further decreed as follows:

Where a claimed priority date included only a year, or a year and a month, the last day of the year or the last day of the month are decreed as the priority date.

Priority dates for groundwater rights after 1961 are reviewed for compliance with the Groundwater Act. Priority dates are not changed if it appeared that the wrong form had been used. If a claim to groundwater after 1961 is based on use, the priority date is decreed as the date of filing the Statement of Claim.

11. STANDARDS

Standards have been adopted to aid in the examination of certain claimed flow rates and volumes. These standards are merely guidelines of reasonable water use. Flow rates and volumes decreed according to these standards are not absolute; they are not unchangeable. They are subject to modification to accurately reflect a claimant's water right in its true and historical sense.

The claimed flow rate and volumes were decreed as claimed where feasible. If they exceeded the standards, the abstract has been so remarked.

12. RESERVOIRS AND STORAGE OF WATER

The right to store water in a reservoir is a storage right separate from a water right. Actual beneficial use of stored water creates a water right. The Water Court decrees the limits of the right.

13. IRRIGATION RIGHTS

Flow Rate. Direct flow irrigation rights are decreed by flow rate.

Flow rate is decreed in gallons per minute (gpm) or in cubic feet per second (cfs) instead of the traditional miner's inches. Mont. Code Ann. sec. 85-2-103 (1899). 11.22 gpm is equivalent to one miner's inch; forty miner's inches is equivalent to one cubic foot per second.

The flow rate of a previously decreed water right is unchanged and issued in accord with the flow rate decreed in the original adjudication.

Flow rates of rights based on a filed notice of appropriation or based on use shall not exceed a reasonable application rate. Based upon information and a recommendation provided by the Montana Department of Natural Resources and Conservation, the Water Court finds that a reasonable application rate for direct flow irrigation is 17.00 gpm per acre (1.50 miner's inches per acre). On every claim where the submitted documentation clearly documents a flow rate in excess of 17.00 gpm, it was so decreed. If a flow rate in excess of 17.00 gpm per acre was claimed but not clearly documented, the flow rate was reduced to 17.00 gpm per acre and a remark noting a possible problem was added to the water right claim abstract.

Water spreading and other irrigation systems not susceptible to measurement by flow rate are generally decreed by volume only. Subirrigation and natural overflow were not decreed a flow rate or volume, but the right is limited to the

amount of water historically used for a beneficial use.

Volume. Volume is not decreed for direct flow irrigation rights unless a volume was established in a prior court judgment or decree, or where the Water Court determines that volume is necessary to adequately administer the particular water right. Mont. Code Ann. sec. 85-2-234(6)(b) (1989).

Volume is decreed for rights which involve a reservoir. Volume is decreed in acre-feet per year. An acre-foot of water will cover one level acre to a depth of one foot.

Period of Use. Because the period of use can vary widely for each individual user, a claimed period of use that is reasonable is accepted unless it contradicts a previously decreed or documented period of use.

If a period of use was not designated by the claimant, a period of use was assigned in accord with a reasonable irrigation season for the climatic area. Those seasons are as follows:

<u>Climatic Area</u>	<u>Period of Use</u>
I	March 15 to November 15
II	April 1 to October 30
III	April 15 to October 15
IV	April 20 to October 10
V	April 25 to October 5

Place of Use.

A. Examination of Place of Use. The place of use of the right is designated by legal land description. Aerial photographs, water resource surveys, field investigations and data submitted by the claimant are used by the Montana

Department of Natural Resources and Conservation to examine the claimed place of use. The place of use can be specifically determined by viewing these resources. The resources actually used are specified on the Department's work sheet.

The place of use for irrigation is decreed as claimed. If upon examination the land did not appear irrigated or irrigable, a remark was added to the abstract noting the acreage discrepancy. Significant discrepancies will be reviewed on Motion of the Water Court.

B. Supplemental Water Rights and Place of Use.

Several water rights with different priority dates or different sources may be combined to supplement the irrigation requirements of all or part of the same acreage. Each right is limited to the flow rate and place of use of that right. The sum total flow rate of these rights shall not exceed the amount historically used for a beneficial purpose.

Point and Means of Diversion. The point of diversion and means of diversion are decreed. The point of diversion is specifically designated by legal land description. Secondary points of diversion are noted when possible or necessary. In many cases, the claim and claimant's map will more specifically define the points of diversion. The means of diversion is reviewed and decreed as claimed unless a different means of diversion is apparent.

14. DOMESTIC RIGHTS

Flow Rate. Domestic rights with a claimed flow rate of

40.00 gallons per minute or less are so decreed. If the claimed flow rate exceeds 40.00 gpm and the accompanying documentation does not substantiate the flow rate, the right is decreed a flow rate of 25.00 gallons per minute. When a flow rate claimed had been previously decreed, the flow rate is not changed.

Volume. A reasonable volume of water for domestic use is calculated at 1.00 acre foot per year per household with an additional 0.50 acre foot per year for each quarter acre of yard.

Place of Use. Land irrigated as part of the domestic use is decreed as part of the place of use. If a claim for domestic use included irrigation separate from the domestic use, an implied claim was generated for the separate irrigation use.

Period of Use. The period of use claimed is the period of use decreed.

15. STOCKWATER RIGHTS

Volume. Where stock drink directly from surface water sources, the volume is not quantified. The limit of the right is based on a consumptive use of 30 gallons per day per animal unit. An animal unit is described as a cow/calf pair or equivalent. The number of animal units is limited to the reasonable carrying capacity of the area historically serviced by the water source. Such rights are limited to their historical beneficial use.

The claimed volume was decreed for all stockwater claims filed by the United States of America which involve pothole lakes and reservoirs pursuant to Judge Lessley's Order

dated August 7, 1987.

Flow Rate. The flow rates for stockwater wells and developed springs are governed by diversion's capacity.

Rights involving stock drinking directly from surface water sources are not decreed a specific flow rate. Although not quantified by flow rate, such rights are limited to their historical beneficial use.

The claimed flow rate is decreed for offstream reservoirs. This flow rate represents the rate at which water is withdrawn or diverted from the source.

Point of Diversion. When a stockwater use is direct from a surface water source, the legal land description for the point of diversion will be the same as that for the place of use. Where there is offstream storage the legal land description for the point of diversion may differ from that for the place of use.

16. OTHER USE RIGHTS

In this basin, water claims were submitted for the following uses: commercial, institutional, mining, fish and wildlife, industrial, municipal, recreation, power generation, fire protection and multiple domestic.

All instream fish, fish and wildlife, and recreation claims will be reviewed on Motion of the Water Court to determine their validity and, if valid, the volume and flow rate of such instream rights.

Flow Rate and Volume. Flow rate and volume are decreed as claimed unless the documentation accompanying the claim

supports a different amount. Commercial and industrial uses are limited to a volume based on a twelve hour day unless documentation supports a higher volume based on a longer day.

Other Elements. The remaining elements of "other use" claims are generally treated the same as on irrigation claims.

Incidental Use. Many purposes, especially fish and wildlife, wildlife, and recreation are incidental to another beneficial use of water. The extent of the water right for an incidental use is no more than the extent of the primary use of the water. The use of the right for several purposes does not increase the extent of the right, rather it decrees the right to alternate and interchange the use (purpose) of the water in accord with historical practices. Such incidental uses are noted by a remark.

17. INTERBASIN TRANSFER CLAIMS

Claims having a point of diversion in one basin and place of use in another basin are called interbasin transfers. An interbasin transfer claim will be decreed only in the basin where the point of diversion is located. However, an interbasin transfer claim will be noticed in the decree of the basin(s) where the place of use is located. Objections to interbasin transfers may be filed during the objection periods for either the point of diversion basin or the place of use basin.

18. UNRESOLVED FACTUAL AND LEGAL ISSUES

Unresolved factual and legal issues have been noted by remarks on the claim abstracts. All such issues will be reviewed on Motion of the Water Court. The objection period

provides an opportunity to raise any issue which needs to be resolved.

19. TERMINATED CLAIMS

The Water Court takes judicial notice of 66 water claims that have been terminated throughout the adjudication process. The claims listed below have been withdrawn by the claimants:

41C-0-119389-00, 41C-0-119390-00, 41C-0-119391-00, 41C-0-119392-00
41C-0-119393-00, 41C-0-119394-00, 41C-0-119395-00, 41C-0-119396-00
41C-0-119398-00, 41C-0-119399-00, 41C-0-119400-00, 41C-0-119401-00
41C-0-119402-00, 41C-0-119425-00, 41C-0-119428-00, 41E-0-119429-00
41C-W-119430-00, 41C-0-119431-00, 41C-0-119437-00, 41C-0-119438-00
41C-0-119439-00, 41C-0-119440-00, 41C-0-119441-00, 41C-0-119455-00
41C-0-119456-00, 41C-0-119457-00, 41C-0-119458-00, 41C-0-119459-00
41C-0-119470-00, 41C-0-119471-00, 41C-0-119472-00, 41C-0-119473-00
41C-0-119474-00, 41C-0-119476-00, 41C-0-119477-00, 41C-0-119478-00
41C-0-119479-00, 41C-0-119480-00, 41C-0-119485-00, 41C-0-119486-00
41C-0-119487-00, 41C-0-119488-00, 41C-0-119489-00, 41C-0-119491-00
41C-0-119492-00, 41C-0-119493-00, 41C-0-119494-00, 41C-0-119495-00
41C-0-137249-00, 41C-0-137250-00, 41C-0-193800-00, 41C-0-193801-00
41C-0-193802-00, 41C-0-193879-00, 41C-0-193903-00, 41C-0-193905-00
41C-0-196969-00, 41C-0-196970-00, 41C-0-196973-00, 41C-0-196974-00
41C-0-196975-00, 41C-0-196976-00, 41C-0-196977-00, 41C-0-196978-00
41C-0-196979-00, 41C-0-212790-00

20. LATE CLAIMS

The Montana Supreme Court ordered the deadline for filing claims of existing water rights as 5:00 PM on April 30, 1982. In this basin there were 66 claims filed after the deadline. Five of these claims were later withdrawn by the claimant and are included in Finding 19 above. The failure to file a claim, as required by Mont. Code Ann. section 85-2-221 (1979), establishes a conclusive presumption of abandonment of that right under Mont. Code Ann. section 85-2-226 (1979). The 61 remaining claims listed below were filed after 5:00 PM on April 30, 1982:

41C-W-169222-00, 41C-W-169223-00, 41C-W-169224-00
41C-W-196150-00, 41C-W-196250-00, 41C-W-196251-00, 41C-W-196252-00

41C-W-196253-00, 41C-W-196254-00, 41C-W-196255-00, 41C-W-196256-00
41C-W-196257-00, 41C-W-196258-00, 41C-W-196267-00, 41C-W-196285-00
41C-W-196286-00, 41C-W-196988-00, 41C-W-196989-00, 41C-W-196990-00
41C-W-196991-00, 41C-W-197134-00, 41C-W-197135-00, 41C-W-199144-00
41C-W-206690-00, 41C-W-210666-00, 41C-W-210667-00, 41C-W-210668-00
41C-W-210669-00, 41C-W-210698-00, 41C-W-210699-00, 41C-W-210700-00
41C-W-210737-00, 41C-W-210871-00, 41C-W-210872-00, 41C-W-210873-00
41C-W-210874-00, 41C-W-211159-00, 41C-W-211502-00, 41C-W-211503-00
41C-W-211504-00, 41C-W-211505-00, 41C-W-211506-00, 41C-W-211507-00
41C-W-211508-00, 41C-W-211509-00, 41C-W-211510-00, 41C-W-211511-00
41C-W-211512-00, 41C-W-211513-00, 41C-W-211514-00, 41C-W-211515-00
41C-W-211987-00, 41C-W-212011-00, 41C-W-212012-00, 41C-W-212584-00
41C-W-213386-00, 41C-W-213387-00, 41C-W-213388-00, 41C-W-213706-00
41C-W-213707-00, 41C-W-213708-00

Late claims filed in this basin are included in this Temporary Preliminary Decree to provide notice of the claimed rights. Actual validity of these claims has not been determined, and objections may be filed on all issues as to these claims.

Based on these Findings of Fact, the Water Master makes the following:

CONCLUSIONS OF LAW

I.

The Montana Water Court has jurisdiction to enter a Temporary Preliminary Decree for the Ruby River Basin pursuant to Mont. Code Ann. Title 85, Chapter 2.

II.

These Findings of Fact, Conclusions of Law and Abstracts which define the nature and extent of each claimed existing water right under Montana law in the Ruby River Basin comprise a Temporary Preliminary Decree in accordance with Mont. Code Ann. sec. 85-2-231 (1989) and Rule I.II of the Water Right Claims

Examination Rules (1987).

DATED this 14th day of November, 1990.



C. Bruce Loble
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