

**IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
FLATWILLOW CREEK, INCLUDING BOX ELDER CREEK BASIN (40B)**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FOR THE INTERLOCUTORY DECREE OF  
FLATWILLOW CREEK, INCLUDING BOX ELDER CREEK BASIN (40B)**

The Water Court issued the Preliminary Decree of the Flatwillow Creek, Including Box Elder Creek Basin (40B) on May 5, 2011. Objections filed to the claims in the Preliminary Decree and issue remarks appearing on the claims in the Preliminary Decree have been addressed and resolved.

These Findings of Fact and Conclusions of Law are issued for inclusion in the Flatwillow Creek, including Box Elder Creek Basin (40B) Interlocutory Decree as authorized by §§ 3-7-224(2), 85-2-231, MCA. Although this Decree includes water rights within the hydrologic boundaries of Basin 40B, it does not include all the water rights in the Basin. The purpose of this Decree is to adjudicate water rights not included in the Preliminary Decree in Basin 40B and not included in a decree involving a federal or tribal compact, and any water rights with unresolved issue remarks.

**FINDINGS OF FACT**

DESCRIPTION OF BASIN

1. Basin 40B encompasses the Flatwillow Creek drainage, including its tributaries and groundwater located within the basin. Flatwillow Creek is a tributary of the lower Musselshell River. The basin includes portions of Fergus, Petroleum, and Golden Valley Counties. The boundaries of Basin 40B are outlined on the attached map.

DECREE ABSTRACTS AND INDEX

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for 348 claims in Basin 40B. Accompanying the Decree are six Indexes designed to facilitate research on 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. Copies of the Decree and six Indexes are available on the DNRC's Water Rights Adjudication webpage (<https://dnrc.mt.gov/Water-Resources/Water-Rights/Basin-Status>).

#### UNRESOLVED FACTUAL AND LEGAL ISSUES

4. Parties may file objections ONLY to the water rights in this Decree. Issues may also be raised by the Water Court on its own initiative. Rule 8, W.R.Adj.R.

5. Unresolved factual and legal issues have been noted by issue remarks on claim abstracts. The Issue Remark Index combines the issue remarks into a list arranged numerically by water right claim number. Searching the Issue Remark Index by water right claim number will identify issue remarks on individual claim abstracts. Issue remarks not resolved through the objection process will be resolved pursuant to § 85-2-248, MCA.

6. Water users within this Basin and other interested persons will be mailed a Notice of Entry of Interlocutory 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.

7. 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 rights compacts with the federal government and Indian tribes. Sections 85-2-701 through 85-2-708, MCA. There may be claimed tribal reserved rights and federal reserved rights in this basin that are not reflected in this Decree.

Resolution of any claims in this basin made by the Confederated Salish and Kootenai Tribes of the Flathead Reservation ("Tribes") or the United States of America on behalf

of the Tribes currently is stayed and such claims are not addressed in this Decree. Those rights may be issued in a separate decree.

### **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. Section 85-2-102(13), MCA.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. These exempt rights were for stock or domestic uses from instream or groundwater sources. The Montana Legislature later created a process to file claims for existing water rights that were exempt from filing in the statewide water right adjudication. Section 85-2-222(2), MCA.

3. The Montana Water Court has jurisdiction to enter an Interlocutory Decree of the Flatwillow Creek, including Box Elder Creek Basin (Basin 40B) pursuant to Title 85, Chapter 2, Montana Code Annotated. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983); *State ex rel. Greely v. Confederated Salish and Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

4. These Findings of Fact, Conclusions of Law, and abstracts define these 348 existing water rights under Montana law in Basin 40B and comprise an Interlocutory Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via Electronic Mail:**

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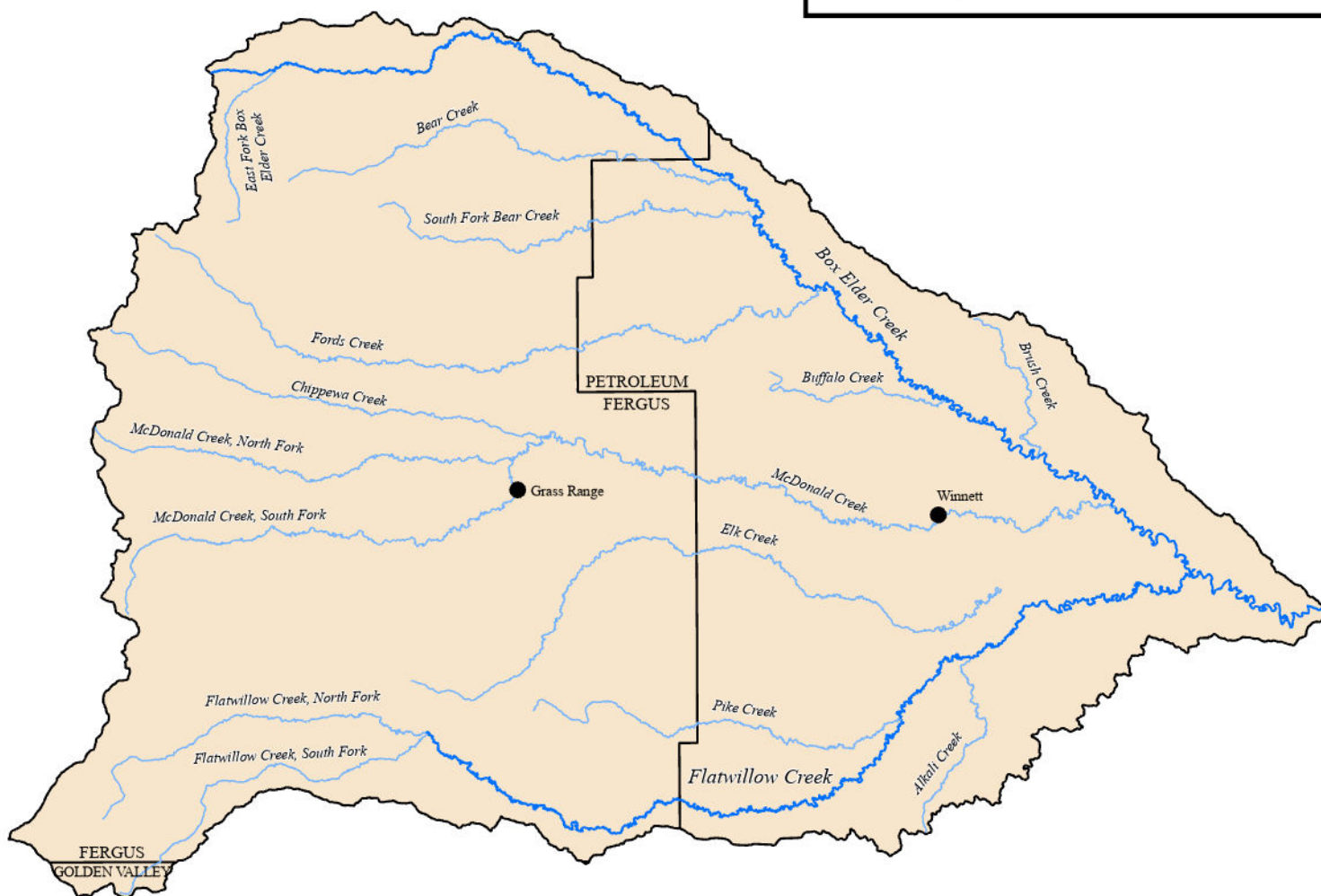
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# BASIN 40B - FLATWILLOW CREEK, INCLUDING BOX ELDER CREEK



## Legend

- Towns
- Flatwillow Creek
- Box Elder Creek
- Streams
- Basin 40B Boundary



0 5 10 Miles

A horizontal scale bar with markings for 0, 5, and 10 miles.