

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MILK RIVER ABOVE FRESNO RESERVOIR (BASIN 40F)

FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE  
INTERLOCUTORY DECREE OF MILK RIVER ABOVE FRESNO RESERVOIR  
(BASIN 40F)

The Preliminary Decree for the Milk River Above Fresno Reservoir (Basin 40F) was issued on December 12, 2013. Objections filed to claims in the Preliminary Decree and issue remarks appearing on the claims in the Preliminary Decree continue to be addressed and resolved.

These Findings of Fact and Conclusions of Law are issued for inclusion in the Interlocutory Decree for the Milk River Above Fresno Reservoir (Basin 40F) as authorized by §§ 3-7-224(2), 85-2-231, MCA.

FINDINGS OF FACT

DESCRIPTION OF BASIN

1. Basin 40F encompasses the Milk River above Fresno Reservoir and its tributaries as well as groundwater located within Basin 40F. The boundaries of Basin 40F are outlined on the attached map. Although this Decree includes water rights within the hydrologic boundaries of Basin 40F, 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 prior Decree in Basin 40F.

DECREE ABSTRACTS AND INDEX

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for the 45 claims included in this decree. 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. CD copies of the Decree and six Indexes are located at the Department of Natural Resources and Conservation (DNRC) Havre 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 allows interested parties to raise issues regarding ONLY 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.

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. Objections may be filed to claims with issue remarks. Issue remarks not resolved through the objection process will be resolved pursuant to § 85-2-248, MCA.

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.

## 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. Section 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. Section 85-2-222(2), MCA.

3. The Montana Water Court has jurisdiction to enter an Interlocutory Decree for the Milk River Above Fresno Reservoir (Basin 40F) pursuant to Title 85, Chapter 2, Montana Code Annotated. *Ariz. v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S. Ct. 3201 (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 45 existing water rights under Montana law in Basin 40F and comprise an Interlocutory Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.

DATED this 13<sup>th</sup> day of July, 2022.

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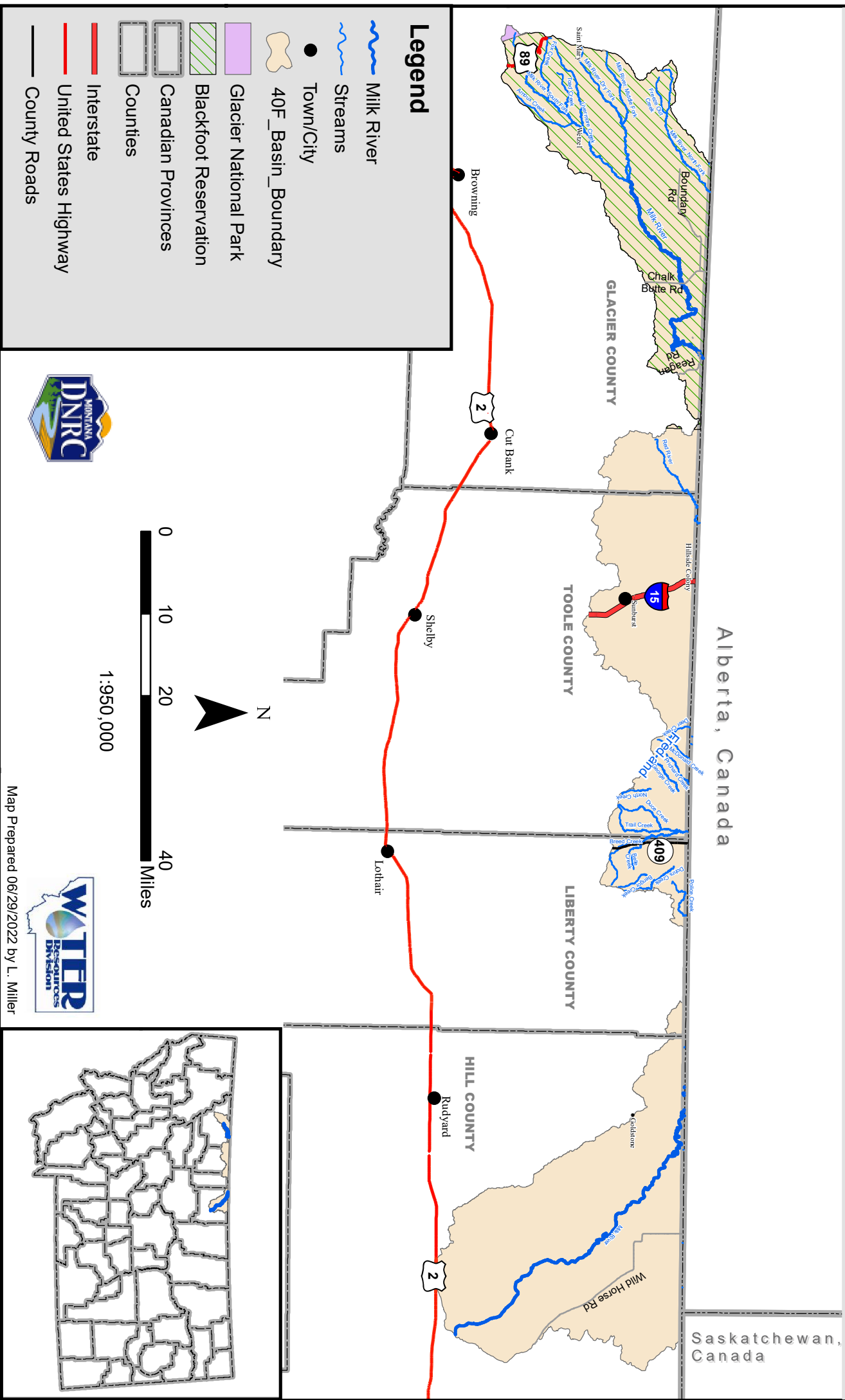
Russ McElyea  
Chief Water Judge

### **Service via Electronic Mail**

DNRC Water Resources  
Havre Regional Office  
PO Box 1828  
Havre, MT 59501-1828  
mmiles@mt.gov;  
dbrough@mt.gov;  
terpeterson@mt.gov

Laura Hinck, Adjudication Supervisor  
DNRC Adjudication Office  
PO Box 201602  
Helena, MT 59620  
Lhinck2@mt.gov

# Basin 40F Milk River, Above Fresno Reservoir



Map Prepared 06/29/2022 by L. Miller