

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

**MONTANA WATER COURT
LOWER MISSOURI DIVISION
MILK RIVER BETWEEN FRESNO RESERVOIR AND WHITEWATER CREEK
BASIN 40J**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
FOR THE INTERLOCUTORY DECREE OF THE MILK RIVER BASIN
BETWEEN FRESNO RESERVOIR AND WHITEWATER CREEK
(BASIN 40J)**

The Water Court issued the Preliminary Decree for the Milk River Basin Between Fresno Reservoir and Whitewater Creek (Basin 40J) on June 24, 2010. These Findings of Fact and Conclusions of Law are issued as the Interlocutory Decree for Basin 40J, as authorized by §§ 3-7-224(2), 85-2-231, MCA. Although this Decree includes water rights within the hydrologic boundaries of Basin 40J, it does not include all the water rights in the Basin. The purpose of this Decree is to adjudicate water rights that were not included in the Basin 40J Preliminary Decree, water rights not included in a decree involving a federal or tribal compact, and any previously-decreed water rights with unresolved issue remarks that are not currently in a pending case.

FINDINGS OF FACT

DESCRIPTION OF BASIN

1. Basin 40J is one of several Milk River basins in Montana. The Milk River is a tributary of the Missouri River. Basin 40J encompasses the portion of the Milk River drainage, including its tributaries and groundwater, downstream from Fresno Reservoir and upstream from the confluence of the Milk River and Whitewater Creek. The basin is located in the Lower Missouri Division and includes portions of Hill County, Blaine County, Phillips County, and a small portion of Valley County. The basin also includes

portions of the Fort Belknap Reservation and the Rocky Boys Reservation. The headwaters of some of the tributaries are located in Canada. The basin boundaries are depicted on the attached map.

DECREE ABSTRACTS AND INDEX

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for 621 claims in Basin 40J. 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 Department of Natural Resources and Conservation (“DNRC”) Water Rights Adjudication webpage (<https://dnrc.mt.gov/Water-Resources/Water-Rights/Basin-Status>).

UNRESOLVED FACTUAL AND LEGAL ISSUES

4. Objections filed to the claims in the Preliminary Decree and most issue remarks appearing on the claims in the Preliminary Decree have been addressed and resolved. Any claims from the Preliminary Decree with unresolved issue remarks or claims within the Basin not included in the Preliminary Decree are included in this Decree.

5. 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.

6. DNRC examined the claims in this Decree pursuant to its claim examination rules and orders from the Water Court. Following its examination, DNRC provided a summary report to the Water Court. DNRC’s summary report identified issues with certain claims.

7. 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.

8. 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.

9. 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 off-reservation 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 Milk River Basin Between Fresno Reservoir and Whitewater Creek (Basin 40J) 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 621 existing water rights under Montana law in Basin 40J 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:

Todd Netto
Adjudication, Enforcement &
Distribution Bureau Chief
Water Resources Division
Montana DNRC
tnetto@mt.gov

DNRC Havre Regional Office
DNRCHavreWater@mt.gov

Matt Miles
Regional Manager
DNRC Havre Regional Office
MMiles@mt.gov

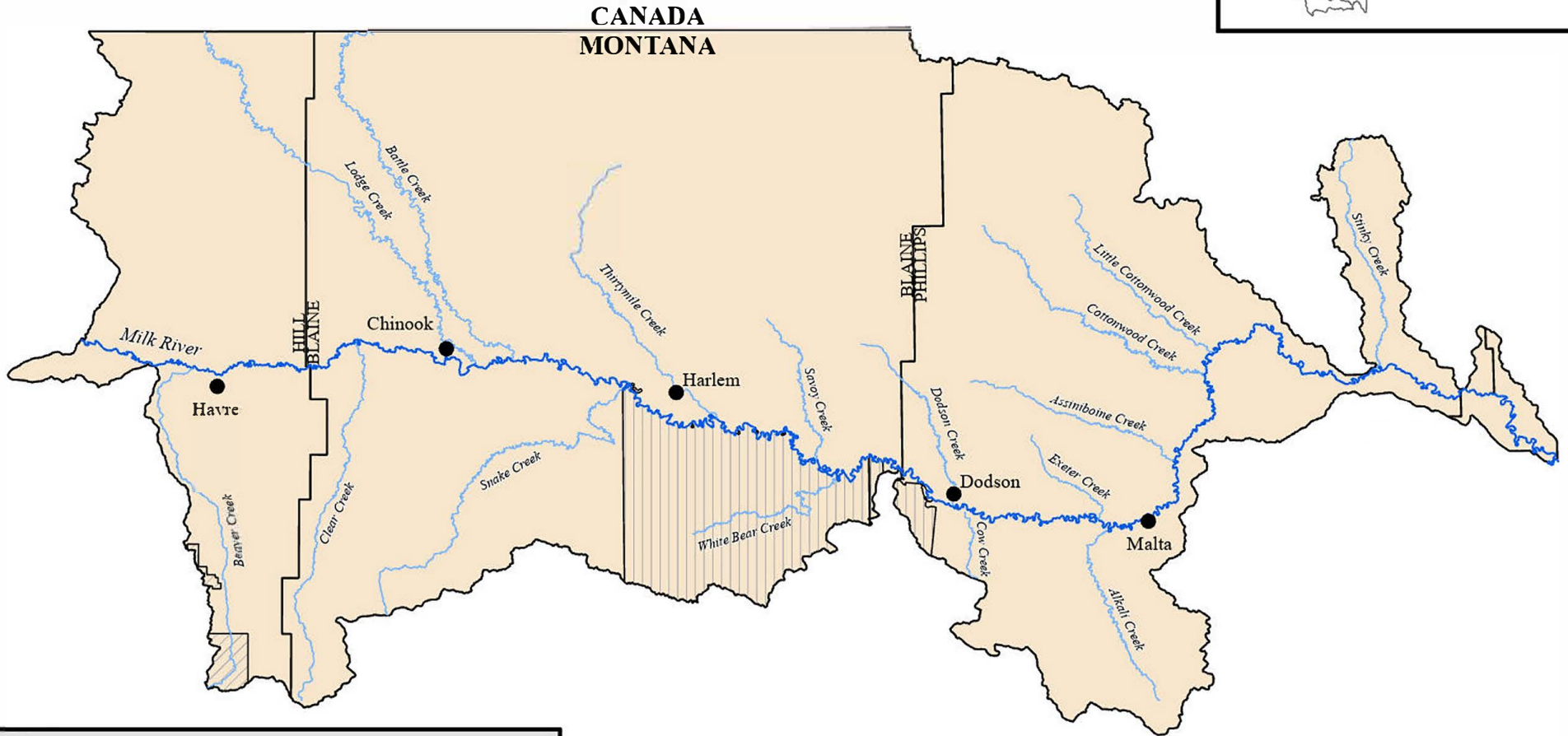
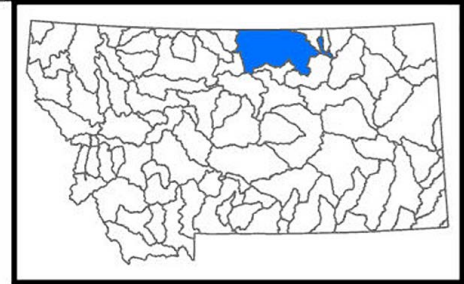
Jeremiah Hughes
Adjudication & Verification Supervisor
Montana DNRC
Jeremiah.Hughes@mt.gov

Jamie Verploegen
Water Resource Specialist
DNRC Havre Regional Office
Jamie.Verploegen@mt.gov

Shannon Buswell
Water Rights Data Quality &
Standards Program Supervisor
Montana DNRC
Shannon.Buswell@mt.gov

Brandy Gray
Compliance Specialist
Montana DNRC
Brandy.Gray@mt.gov

BASIN 40J - MILK RIVER, BETWEEN FRESNO RESERVOIR AND WHITEWATER CREEK



Legend

- Towns
- Milk River
- Streams
- ▨ Rocky Boy's Reservation
- ▨ Fort Belknap Reservation
- ▭ Basin 40J Boundary



0 5 10 Miles