

Montana Water Court
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40S-0501-S-2021

December 20, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MISSOURI RIVER BELOW FORT PECK DAM BASIN 40S

CLAIMANTS: Remi Bidegaray; Claude Bidegaray

CASE 40S-0501-S-2021
40S 130506-00
40S 130507-00
40S 30151578

NOTICE OF FILING OF MASTER’S REPORT

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

**MASTER’S REPORT
FINDINGS OF FACT**

1. On June 24, 2021, a Master’s Report was issued. On July 9, 2021, an Objection to the Master’s Report was filed and on July 16, 2021 the case was remanded back to this Master.

2. On August 27, 2021, an Order Setting Filing Deadline was issued requiring Remi Bidegaray to file documentation stating his position on the remark proposed by Claude Bidegaray in his Objection. The order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the remark described in the Objection should be added to the claims”.

3. Pursuant to the Order, the remarks on the claims should be modified as follows:
THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE
ASSOCIATED. THEY SHARE THE SAME PUMP SITE.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.

3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS 17, *6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v. Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, *6. It is within the power of this

Court to terminate a water right claim if a claimant fails to participate. Rule 22.
W.R.Adj.R.

CONCLUSION OF LAW

1. The claimants have failed to participate meaningfully in this case, despite being given opportunity to do so. *See Order Setting Filing Deadline, August 27, 2021.* Accordingly, the record supports the adoption of the modifications discussed above as a sanction for failing to comply with this Court's previous Orders.

RECOMMENDATION

1. Upon review the record in this case, the claims should be modified as discussed above.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

Nathan Block
Water Master

Service via USPS Mail:

Claude Bidegaray
31600 County Road 154
Brockton, MT 59213-9501

Remi Bidegaray
15262 County Road 316
Brockton, MT 59213-9530

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BELOW FORT PECK DAM
BASIN 40S**

Water Right Number: 40S 130506-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: REMI BIDEGARAY
15262 COUNTY RD 316
BROCKTON, MT 59213 9530

Priority Date: JULY 29, 1935

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1,297.60 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 80.00

Source Name: MISSOURI RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | SWSWNE | 6 | 27N | 53E | RICHLAND |

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

***Period of Use:** APRIL 1 TO OCTOBER 31

***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 40.00 | | SESE | 31 | 28N | 53E | RICHLAND |
| 2 | 40.00 | | SWSW | 32 | 28N | 53E | RICHLAND |

Total: 80.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME PUMP SITE. 40S 130507-00 40S 30151578.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BELOW FORT PECK DAM
BASIN 40S**

Water Right Number: 40S 130507-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: REMI BIDEGARAY
15262 COUNTY RD 316
BROCKTON, MT 59213 9530

Priority Date: OCTOBER 1, 1935

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2,545.95 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 157.00

Source Name: MISSOURI RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | SWSWNE | 6 | 27N | 53E | RICHLAND |

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

***Period of Use:** APRIL 1 TO OCTOBER 31

***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---------------|---------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 116.00 | | NE | 6 | 27N | 53E | RICHLAND |
| 2 | 41.00 | | NWNW | 4 | 27N | 53E | RICHLAND |
| Total: | 157.00 | | | | | | |

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME PUMP SITE. 40S 130506-00 40S 30151578.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

SPLIT CLAIM NO. 40S 30151578 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BELOW FORT PECK DAM
BASIN 40S**

Water Right Number: 40S 30151578 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: CLAUDE BIDEGARAY
31600 COUNTY RD 154
BROCKTON, MT 59213 9501

Priority Date: OCTOBER 1, 1935

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5,156.76 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 318.00

Source Name: MISSOURI RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | SWSWNE | 6 | 27N | 53E | RICHLAND |

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: APRIL 1 TO OCTOBER 31

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---------------|---------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 7.00 | | NWNW | 4 | 27N | 53E | RICHLAND |
| 2 | 13.00 | | SENWNW | 5 | 27N | 53E | RICHLAND |
| 3 | 40.00 | | NENW | 5 | 27N | 53E | RICHLAND |
| 4 | 40.00 | | SENW | 5 | 27N | 53E | RICHLAND |
| 5 | 26.00 | | SWNW | 5 | 27N | 53E | RICHLAND |
| 6 | 135.00 | | NE | 5 | 27N | 53E | RICHLAND |
| 7 | 53.00 | | N2SW | 5 | 27N | 53E | RICHLAND |
| 8 | 4.00 | | NWSWSW | 5 | 27N | 53E | RICHLAND |
| Total: | <u>318.00</u> | | | | | | |

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME PUMP SITE. 40S 130506-00 40S 30151578.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40S 130507-00.