

Montana Water Court
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ELECTRONICALLY FILED

41T-6002-A-2021

December 10, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MISSOURI RIVER FROM MARIAS RIVER
TO AND INCLUDING BULLWHACKER CREEK (BASIN 41T)

* * * * *

CLAIMANTS: Arland W. Gasvoda; Pamela K. Gasvoda

CASE 41T-6002-A-2021
41T 47131-00
41T 47134-00

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

On September 30, 2021, Claimants Arland and Pamela Gasvoda filed a Verified Motion to Amend water right claim 41T 47131-00 (Motion to Amend). The Gasvodas attached a motion to amend for claim 41T 47134-00, dated December 15, 2013. Claims 41T 47131-00 and 41T 47134-00 were consolidated into case 41T-6002-A-2021 to address the motions to amend.

FINDINGS OF FACT

1. On November 17, 2021, the Court held a Status Conference to discuss the Gasvodas' motions to amend.

2. The Gasvodas have two water right claims representing multiple uses of a single water right: water from an unnamed developed spring tributary to Lion Coulee (also known as Homestead Spring) in the NWSWNE of Section 12, T25N, R18E, Blaine County. Water right claim 41T 47134-00 represents domestic use from the spring, while water right claim 41T 47131-00 represents livestock use from spring. Both claims divert water via gravity flow at a single point of diversion from the developed springhead. Each claim appeared in the Basin 41T Preliminary Decree with the following information remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

47131-00, 47134-00

3. The Gasvodas' motion to amend their domestic claim (41T 47134-00) was processed following the issuance of the Preliminary Decree in 2013. A February 20, 2014, Master's Report modified the flow rate of that domestic claim from 1.00 gpm to 5.00 gpm to reflect the historical flow rate diverted at the developed spring.

4. The flow rate of the Gasvodas' livestock claim (41T 47131-00) was not addressed at that time. They filed the instant Motion to Amend to correct the flow rate of the livestock claim to reflect historical use of the same 5.00 gpm claimed under their domestic claim.

5. Quantifying the flow rate of the livestock claim as the rate water is diverted from the developed spring is consistent with Department of Natural Resources and Conservation (DNRC) examination procedures, and the proposed flow rate does not exceed the DNRC's 35 gpm guideline for stock drinking from a developed spring. See, Water right Claim Examination Manual at pp. 505-07 (2013).

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. A statement of claim for an existing water right or an amended claim of an existing right constitutes prima facie proof of its content until the issuance of a final decree. § 85-2-227(1), MCA. Anyone seeking to modify a claim or amended claim has the burden of showing by a preponderance of the evidence that the elements of the claim are incorrect. Preponderance of the evidence is a relatively modest standard that requires a party to prove the existence of a particular fact is more probable than not. *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 248 P.3d 628. This is the applicable burden of proof for every assertion that a claim is incorrect, regardless of whether the party seeking the modification is an adverse party or the claimant objecting to its own claim. Rule 19 W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

3. After the issuance of a decree, any motion to amend that may adversely affect other water rights must be noticed pursuant to §85-2-233 (6), MCA.

CONCLUSIONS OF LAW

1. The Gasvodas have shown by a preponderance of the evidence that the flow rate of claim 41T 47131-00 should be modified to 5.00 gpm. The Gasvodas' water right from the source spring already includes the 5.00 gpm flow rate of the developed spring. Correcting the livestock portion of that right to reflect the water diverted from the spring does not increase the water right or have the potential to adversely affect other water rights. No publication is required under §85-2-233 (6), MCA. This modification resolves the Gasvodas' Motion to Amend.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the flow rate of claim 41T 47131-00 to 5.00 gpm.

A copy of the Motion to Amend and a post-decree abstract of the water right claim reflecting the recommended changes are attached to this Report.

Eyvind Ostrem
Water Master

Service via USPS Mail

Arland W Gasvoda
Pamela K Gasvoda
4496 Eagleton Rd
Big Sandy, MT 59520

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM**

**MISSOURI RIVER, FROM MARIAS RIVER TO & INCLUDING BULLWHACKER CREEK
BASIN 41T**

Water Right Number: 41T 47131-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ARLAND W GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

PAMELA K GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

Priority Date: DECEMBER 31, 1944

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 5.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF LION COULEE

Source Type: GROUNDWATER

ALSO KNOWN AS HOMESTEAD SPRING.

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		NWSWNE	12	25N	18E	BLAINE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 TO DECEMBER 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			NWSWNE	12	25N	18E	BLAINE

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

47131-00 47134-00

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM MARIAS RIVER TO & INCLUDING BULLWHACKER CREEK
BASIN 41T

Water Right Number: 41T 47134-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ARLAND W GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

PAMELA K GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

Priority Date: DECEMBER 31, 1944

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

***Flow Rate:** 5.00 GPM

Volume: 1.60 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: SPRING, UNNAMED TRIBUTARY OF LION COULEE

Source Type: GROUNDWATER

ALSO KNOWN AS HOMESTEAD SPRING.

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		NWSWNE	12	25N	18E	BLAINE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 TO DECEMBER 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	0.50		NWSWNE	12	25N	18E	BLAINE

Total: 0.50

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

47131-00 47134-00

41T-6002-A-2021

STATE OF MONTANA)

COUNTY OF)

Chouteau

) ss.

September 30, 2021

Montana Water Court

VERIFIED MOTION TO AMEND WATER RIGHT CLAIM

(Describe the proposed amendment, and the historical use of the water right as it relates to the proposed amendment. The following changes should be made to correct the abstract of this claim so it reflects this right as it existed prior to July 1, 1973. If the proposed amendment involves the place of use, acres irrigated, point of diversion, or source of the water right, attach a map showing the proposed amendment.)

Water Right No. 41T 47131-00

In 2013 I applied for a flow rate change which you approved.

Now I would like to include livestock in that flow rate change.

Never use any for domestic use but do for livestock

Please change livestock from 2 to 5 gal per minute.

I/We declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct. (Please include signatures of all owners. Additional proceedings will be required if all signatures are not included.)

Arland W. Sasvoda

Owner Signature

9-27-2021

(Date)

Randy K. Sasvoda

Owner Signature

9-27-2021

(Date)

Owner Signature

(Date)

4496 Eagleton Rd
Big Sandy, MT.
59520

STATE OF MONTANA

COUNTY OF

BLAINE

)
) ss.
)

41T 47134-00

VERIFIED MOTION TO CORRECT WATER RIGHT CLAIM

(Describe the proposed correction, and the historical use of the water right as it relates to the proposed correction. The following changes should be made to correct the abstract of this claim so it reflects this right as it existed prior to July 1, 1973. If the proposed correction involves the place of use, acres irrigated, point of diversion, or source of the water right, attach a map showing the proposed correction.)

The flow rate is incorrect for domestic Claim No. 41T 47134-00. The correct historical flow rate is 5 gpm.

I/We declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct. (Please include signatures of all owners. Additional proceedings will be required if all signatures are not included.)

Arland W. Gasvoda

(Owner)

12-15-2013

(Date)

Pamela K. Gasvoda

(Owner)

12-15-13

(Date)

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601
GENERAL ABSTRACT

Water Right Number: 41T 47134-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE

Version Status: ACTIVE

Owners: PAMELA K GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

ARLAND W GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

Priority Date: DECEMBER 31, 1944

Enforceable Priority Date: DECEMBER 31, 1944

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Maximum Flow Rate: 5.00 GPM

Maximum Volume: 1.60 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: SPRING, UNNAMED TRIBUTARY OF LION COULEE

Source Type: GROUNDWATER

ALSO KNOWN AS HOMESTEAD SPRING.

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		NWSWNE	12	25N	18E	BLAINE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 to DECEMBER 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	0.50		NWSWNE	12	25N	18E	BLAINE

Total: 0.50

Geocodes/Valid: 24-3629-12-1-03-01-0000 - Y

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

47131-00 47134-00

THE FLOW RATE WAS AMENDED BY THE CLAIMANT ON 02/10/2014 PURSUANT TO SECTION 85-2-233(6), MCA.

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

WATER RIGHT OWNERSHIP UPDATE RECEIVED 09/11/1989.

WATER RIGHT OWNERSHIP UPDATE RECEIVED 02/01/1999.

OWNERSHIP UPDATE RECEIVED

OWNERSHIP UPDATE TYPE DOR # 120448 RECEIVED 11/04/2013.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 41T 47131-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT

Version Status: ACTIVE

Owners: ARLAND W GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

PAMELA K GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

Priority Date: DECEMBER 31, 1944

Enforceable Priority Date: DECEMBER 31, 1944

Type of Historical Right: USE

Purpose (use): STOCK

Maximum Flow Rate: 2.00 GPM

Maximum Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF LION COULEE

Source Type: GROUNDWATER

ALSO KNOWN AS HOMESTEAD SPRING.

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		NWSWNE	12	25N	18E	BLAINE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 to DECEMBER 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			NWSWNE	12	25N	18E	BLAINE

Geocodes/Valid: 24-3629-12-1-03-01-0000 - Y

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

47131-00 47134-00

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

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