

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

ELECTRONICALLY FILED

40E-0277-R-2022

July 26, 2022

Montana Water Court

MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER
AND FORT PECK DAM - BASIN (40E)
PRELIMINARY DECREE

CLAIMANTS: Timothy A. Phipps; Dana G. Phipps

OBJECTOR: USA (Dept. of Interior Bureau of Land Mgmt.)

CASE 40E-0277-R-2022

40E 165704-00

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, conclusions 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. Dana G. Phipps and Timothy A. Phipps are the record owners of stock claim 40E 165604-00.

2. Claim 40E 165604-00 was decreed with the following DNRC issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

3. The United States of America (Bureau of Land Management) objected to claim 40E 165704-00.

4. A Status Conference for Case 40E-0277-R-2022 was conducted on April 27, 2022 by telephone conference call. Anika M. Stern presided, and Mark Widerschein was present on behalf of the Bureau of Land Management. The Claimants failed to attend the Conference.

5. A deadline was set for the Bureau of Land Management to file information indicating how the Objection should be resolved. On May 25, 2022, the Bureau of Land Management filed its Response to Court Order. The Response indicated that to “accurately reflect current and historical use, and to remove federal land that is managed by the Bureau of Land Management, the following changes should be made” to claim 40E 165704-00:

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	SENESEW	NESESW	14	19N	33E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
SENESEW	NESESW	14	19N	33E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 2.16 ACRES

Capacity: 6.91 ACRE-Feet

~~THE DAM EXTENDS INTO THE SENESEW, SEC 14 TWP 19N RGE 33E GARFIELD COUNTY.~~

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENESEW	SWNWSE	14	19N	33E	GARFIELD
2			NESESW	14	19N	33E	GARFIELD
3			NWSWSE	14	19N	33E	GARFIELD

6. An Order was issued setting a deadline to determine if Claimants Dana G. Phipps and Timothy A. Phipps agree with the proposed point of diversion, reservoir, and place of use legal land description changes to claim 40E 165704-00. The Order indicated that if nothing were filed by the deadline, this Master would conclude the Claimants agree with the proposed changes. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. Pursuant to Rule 22, W.R.Adj.R., 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 may issue such orders of sanction with regard thereto as are just.

3. The period of diversion and reservoir record issue remarks decreed on claim 40E 165704-00 are notice-type issue remarks. As the Objections have been resolved, no further proceedings are required.

RECOMMENDATIONS

1. Claim 40E 165704-00 should be modified as shown in Finding of Fact No. 5.

2. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Timothy A. Phipps
Dana G. Phipps
461 Boxcar Rd
Brusett, MT 59318-9604

Service Via Electronic Mail:

Eve W. McDonald, Trial Attorney
Mark Widerschein
Natural Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
999 18th St, South Terrace, Suite 370
Denver, CO 80202
(303) 844-1381
Mark.Widerschein@Usdoj.Gov
Evelyn.Mcdonald@Usdoj.Gov
Montanabasins.ENRD@USDOJ.GOV

\\judgalh2osrv\Datavol\Share\WC-BASIN FOLDERS\40E PD\40E CASES\277\40E-0277-R-2022 MR 7.19.22 rc.docx

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E

Water Right Number: 40E 165704-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DANA G PHIPPS
461 BOXCAR RD
BRUSETT, MT 59318 9604

TIMOTHY A PHIPPS
461 BOXCAR RD
BRUSETT, MT 59318 9604

Priority Date: MAY 10, 1960

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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 UNNAMED TRIBUTARY OF SQUAW CREEK

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		SENE SW	14	19N	33E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE SW	14	19N	33E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 2.16 ACRES

Capacity: 6.91 ACRE- FEET

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			SENE SW	14	19N	33E	GARFIELD