

Montana Water Court  
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**FILED**  
10/20/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
40E-0115-R-2023  
Ostrem, Eyvind  
2.00

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER  
AND FORT PECK DAM - BASIN (40E)  
PRELIMINARY DECREE

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CLAIMANT: Pines Cabin Association

**CASE 40E-0115-R-2023**  
40E 165363-00

**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 to 3 days to 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**

Water right claim 40E 165363-00 appeared in the Preliminary Decree for the Missouri River Between Musselshell River and Fort Peck Dam (Basin 40E) issued October 7, 2020. The claim received issue remarks from the Department of Natural

Resources and Conservation (DNRC) identifying potential legal and factual issues with the claim. The claim was consolidated into Case 40E-0115-R-2023 to resolve the issue remarks.

### FINDINGS OF FACT

1. Water right claim 40E 165363-00 received the following substantive issue remark:

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

The April 27, 1982 Statement of Claim for this right appears to show a partial check mark next to “Use Water Right” in the space for “Type of Historical Right.” In support of this December 31, 1950 right, the original claimant attached a portion of a document from the Army Corps of Engineers dated August 1, 1949, approving a “youth camp water line.”

2. The Court ordered the Claimant to review the claim and inform the Court if it disagreed with adding “use” as this claim’s type of historical right. Nothing was filed by the deadline. The following correction should be made to the claim:

**Type of Historical Right: Use**

3. The claim also received the following issue remarks that serve only to provide notice to the Claimant and other water users (Notice Only Remarks):

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

SOURCE NAME AND POINT OF DIVERSION WERE 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.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

## PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. 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. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Rule 22, W.R.Adj.R.

## CONCLUSIONS OF LAW

1. The findings of fact above are supported by a preponderance of the evidence and the modifications described above should be made. The type of historical right remark on the claim is resolved by the modifications described above. The Notice Only Remarks do not raise legal or factual issues for the Court to resolve. They have served their notice purpose and can be removed from the claim.

## RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the claim as described above and remove the issue remarks from the above-captioned claim.

A post-decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via Electronic Mail**

Matthew W Knierim

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**Notice: Service List Updated 9.27.23**

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

**Water Right Number:** 40E 165363-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** PINES CABIN ASSOCIATION  
PO BOX 1167  
GLASGOW, MT 59230 1167

**Priority Date:** DECEMBER 31, 1950

**Type of Historical Right:** USE

**Purpose (use):** RECREATION

**Purpose Clarification:** THE PINES RECREATION AREA

**Flow Rate:** 30.00 GPM

**\*Volume:** 36.00 AC-FT

**Source Name:** MISSOURI RIVER (FORT PECK LAKE)

**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		NWNENW	19	24N	40E	VALLEY

**\*Period of Diversion:** MARCH 1 TO DECEMBER 1

**Diversion Means:** PUMP

**\*Period of Use:** MARCH 1 TO DECEMBER 1

**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			NW	19	24N	40E	VALLEY