

MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

* * * * *

CLAIMANT: Cheryl D. Midtbo

CASE 41Q-0114-I-2023
41Q 30123752
41Q 30123753

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. Cheryl D. Midtbo (Dawn Midtbo) is the record owner of claims 41Q 30123752 and 41Q 30123753.
2. Claims 41Q 30123752 and 41Q 30123753 were decreed with DNRC issue remarks:

41Q 30123752:¹

THIS CLAIM AND WATER RIGHT NO. 41GJ 115119-00 APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

41Q 30123753:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

3. Dawn Midtbo was ordered to meet with a DNRC employee to address the duplicate claim issue remark decreed on claim 41Q 30123752.

4. On July 19, 2023, DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum. (Doc. 3.00)² Mr. Ahlgren indicated he spoke with Dawn Midtbo and reviewed the claim file.

5. Mr. Ahlgren explained exempt notice 41QJ 115119-00 was attached to the Statement of Claim for claim 41Q 30123752 and all elements are identical except for the flow rate. Mr. Ahlgren represented that Ms. Midtbo “is comfortable with the dismissal of exempt notice 41QJ 115119-00.” Mr. Ahlgren recommended exempt notice 41QJ 115119-00 be dismissed and the duplicate claim issue remark be removed from claim 41Q 30123752.

6. An Order Setting Filing Deadline was issued because Dawn Midtbo contacted this Water Master on August 7, 2023 and indicated she needed additional time to determine how to resolve the duplicate claim issue and whether additional documentation needed to be filed to address other issues.

7. On September 15, 2023, Dawn Midtbo filed a Motion to Amend the flow rate for domestic claim 41Q 30123753 from 20.00 gallons per minute (gpm) to 30.00 gpm, reflecting the flow rate on exempt notice 41QJ 115119-00 and correcting an error on Statement of Claim 41Q 30123753. (Doc. 5.00).

8. On September 26, 2023, the DNRC processed the withdrawal of exempt notice 41QJ 115119-00.

¹ The issue remark decreed on claim 41Q 30123752 indicating it duplicates claim 41GJ 115119-00 includes a clerical error. Claim 41GJ 115119-00 does not exist. It appears the remark should have referenced claim 41QJ 115119-00.

² “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Sections 85-2-247, and 85-2-248, MCA.
2. 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.
3. The proposed flow rate increase for claim 41Q 30123753 does not have potential to adversely affect other water users and therefore does not require further notice as provided for in Section 85-2-233(6), MCA.
4. The issue remarks decreed on claims 41Q 30123752 and 41Q 30123753 indicating the claims were not included in the 2010 decree are notice-type remarks. No objections were filed, and no further proceedings are required because of the remarks.

RECOMMENDATIONS

1. The flow rate for claim 41Q 30123753 should be increased from 20.00 gpm to 30.00 gpm.
2. The issue remarks should be removed from claims 41Q 30123752 and 41Q 30123753.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Cheryl D. Midtbo
18014 NE 133 St.
Redmond, WA 98052
425-599-9839

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30123752 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: CHERYL D MIDTBO
18014 NE 133 ST
REDMOND, WA 98052

Priority Date: APRIL 2, 1949

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 10.00 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: GROUNDWATER

Source Type: GROUNDWATER

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 | | SENESE | 34 | 22N | 3E | CASCADE |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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 | | | SENESE | 34 | 22N | 3E | CASCADE |

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.

30123752

30123753

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30123753 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: CHERYL D MIDTBO
18014 NE 133 ST
REDMOND, WA 98052

Priority Date: APRIL 2, 1949

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 1.63 AC-FT

Households: 1

Maximum Acres: 5.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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 | | SENESE | 34 | 22N | 3E | CASCADE |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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 | 5.00 | | SENESE | 34 | 22N | 3E | CASCADE |

Total: 5.00

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.

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