

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

CLAIMANTS: Lorraine Nichols; Arlyn Pankratz; Roger Pankratz

CASE 40S-6002-A-2024
40S 46431-00

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

On April 1, 2024, the Estate of Gary Dahl submitted a Motion to Amend claim 40S 46431-00. The Motion is based on a typographical error on the place of use. Since the Estate of Gary Dahl ended its ownership of the claim at the end of 2023, the Court set

a filing deadline for new claimants Lorrain Nichols, Arlyn Pankratz, and Roger Pankratz to state if they agreed with the Motion. On July 22, 2024, each of the claimants filed their consent to the Motion to Amend.

FINDINGS OF FACT

1. The original Statement of Claim for 40S 46431-00 claimed several direct from source places of use and points of diversion. Point of diversion ID 21 and Place of Use ID 1 are claimed in the SWSW Sec. 1, Twp. 30N, Rge. 44E.

2. At some point during the DNRC's examination of this claim, the description for both the place of use and point of diversion was refined to the W2SWSW Sec. 1. However, when DNRC made that refinement, it inadvertently changed the place of use range to 45E.

3. The Amendment from Claimants states the place of use should be SWSW Sec. 1, Twp. 30N, Rge. 44E.

4. The map attached to the Motion shows the request accurately reflects historical usage. Given that this is a direct from source stock claim, it would be impossible for the place of use to not sync with the points of diversion.

5. The error regarding the legal descriptions of the place of use went unnoticed during the Temporary Preliminary Decree.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information

from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Pursuant to § 85-2-227(2), MCA:

A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

4. The evidence entered into the record is sufficient to support making the correction above.

5. The change to the place of use would neither result in an expansion of the water right nor negatively impact anyone other than Claimant and thus results in no need for notice pursuant to Section 85-2-233(6), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Lorraine Nichols
1819 Frazer Rd N
Frazer, MT 59225-9650

Arlyn Pankratz
2408 Oswego Rd N
Frazer, MT 59225-9630

Roger Pankratz
PO Box 410
Baker, MT 59313-0410

Service via Electronic Mail:

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PO Box 29
Glasgow, MT 59230
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BELOW FORT PECK DAM
BASIN 40S**

Water Right Number: 40S 46431-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: LORRAINE NICHOLS
1819 FRAZER RD N
FRAZER, MT 59225-9650

ARLYN PANKRATZ
2408 OSWEGO RD N
FRAZER, MT 59225-9630

ROGER PANKRATZ
PO BOX 410
BAKER, MT 59313-0410

Priority Date: APRIL 1, 1946

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate:

NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: WOLF CREEK, WEST FORK

Source Type: SURFACE WATER

Source Name: UNNAMED TRIBUTARY OF WOLF CREEK, WEST FORK

Source Type: SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF WOLF CREEK, WEST FORK.

***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		N2NESW	18	30N	45E	VALLEY
Source Name:	WOLF CREEK, WEST FORK					
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		W2SE	18	30N	45E	VALLEY
Source Name:	WOLF CREEK, WEST FORK					
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NE	19	30N	45E	VALLEY

Source Name:	WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
4	E2NENE 30 30N 45E VALLEY
Source Name:	WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
5	W2NW 29 30N 45E VALLEY
Source Name:	WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
6	NW 32 30N 45E VALLEY
Source Name:	WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
7	SWNE 32 30N 45E VALLEY
Source Name:	WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
8	N2SE 32 30N 45E VALLEY
Source Name:	WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
9	SESE 32 30N 45E VALLEY
Source Name:	WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
10	NESWNW 12 30N 44E VALLEY
Source Name:	UNNAMED TRIBUTARY OF WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
11	SWSE 1 30N 44E VALLEY
Source Name:	UNNAMED TRIBUTARY OF WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
12	NWNW 12 30N 44E VALLEY
Source Name:	UNNAMED TRIBUTARY OF WOLF CREEK, WEST FORK
Period of Diversion:	JANUARY 1 TO DECEMBER 31
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE
13	SENW 12 30N 44E VALLEY
Source Name:	UNNAMED TRIBUTARY OF WOLF CREEK, WEST FORK

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 14 NENESW 12 30N 44E VALLEY
Source Name: UNNAMED TRIBUTARY OF WOLF CREEK, WEST FORK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 15 S2N2SE 12 30N 44E VALLEY
Source Name: WOLF CREEK, WEST FORK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 16 W2SWSW 7 30N 45E VALLEY
Source Name: WOLF CREEK, WEST FORK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 17 SWSNW 18 30N 45E VALLEY
Source Name: WOLF CREEK, WEST FORK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 18 S2N2SW 12 30N 44E VALLEY
Source Name: WOLF CREEK, WEST FORK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 19 NWNWSE 12 30N 44E VALLEY
Source Name: UNNAMED TRIBUTARY OF WOLF CREEK, WEST FORK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 20 NESESE 12 30N 44E VALLEY
Source Name: WOLF CREEK, WEST FORK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 21 W2SWSW 1 30N 44E VALLEY
Source Name: UNNAMED TRIBUTARY OF WOLF CREEK, WEST FORK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
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			W2SWSW	1	30N	44E	VALLEY
2			N2NESW	18	30N	45E	VALLEY
3			W2SE	18	30N	45E	VALLEY
4			NE	19	30N	45E	VALLEY
5			E2NENE	30	30N	45E	VALLEY

6	W2NW	29	30N	45E	VALLEY
7	NW	32	30N	45E	VALLEY
8	SWNE	32	30N	45E	VALLEY
9	N2SE	32	30N	45E	VALLEY
10	SESE	32	30N	45E	VALLEY
11	NESWNW	12	30N	44E	VALLEY
12	SWSE	1	30N	44E	VALLEY
13	NWNW	12	30N	44E	VALLEY
14	SENW	12	30N	44E	VALLEY
15	NENESW	12	30N	44E	VALLEY
16	S2N2SE	12	30N	44E	VALLEY
17	W2SWSW	7	30N	45E	VALLEY
18	SWSENW	18	30N	45E	VALLEY
19	S2N2SW	12	30N	44E	VALLEY
20	NWNWSE	12	30N	44E	VALLEY
21	NESESE	12	30N	44E	VALLEY

Remarks:

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 04/20/2011: POINT OF DIVERSION AND PLACE OF USE.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE FORT PECK INDIAN RESERVATION.

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