

Montana Water Court
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FILED
08/12/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40S-6003-A-2024
Nordlund, Julia
3.00

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

CLAIMANT: Shawn Sanders

CASE 40S-6003-A-2024
40S 130532-00

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 June 10, 2024, Claimant Shawn Sanders submitted a Motion to Amend claim 40S 130532-00. The Motion is based on a typographical error found by DNRC while performing an ownership update.

FINDINGS OF FACT

1. The original Statement of Claim for 40S 130532-00 claimed a place of use and point of diversion in the SWSESE Sec. 7, Twp 28N, Rge. 48E.
2. The Amendment from Claimant states the POU and POD should be SWSESE Sec. 7, Twp 27N, Rge. 48E.
3. The map attached to the Motion shows the request accurately reflects historical usage. The original Declaration of Vested Groundwater Rights attached to the Statement of Claim also states that the well is located in township 27.
4. The error regarding the legal descriptions of the place of use and point of diversion went unnoticed during the Temporary Preliminary Decree.
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.

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.

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

Shawn Sanders
7084 Road 47
Torrington, WY 82240-8466

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BELOW FORT PECK DAM
BASIN 40S**

Water Right Number: 40S 130532-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SHAWN SANDERS
7084 ROAD 47
TORRINGTON, WY 82240-8466

Priority Date: DECEMBER 29, 1965

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 1.80 AC-FT

Households: 2

Maximum Acres: 0.13

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		SWSESE	7	27N	48E	ROOSEVELT

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	0.13		SWSESE	7	27N	48E	ROOSEVELT

Total: 0.13

Remarks:

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.