

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)
INTERLOCUTORY DECREE

CLAIMANT: Carol C. Johns

CASE 40S-0024-I-2024

40S 30133620

40S 30133621

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

Claims 40S 30133620 and 40S 30133621 appeared in the Interlocutory Decree for the Lower Missouri River, Below Fort Peck Dam (Basin 40S) with Montana Department of Natural Resources and Conservation (“DNRC”) issue remarks. The claims did not

receive objections, counterobjections, or notices of intent to appear. Carol C. Johns owns the claims. The claims were consolidated into Water Court Case 40S-0024-I-2024 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 40S 30133620 is a groundwater stock right and claim 40S 30133621 is a groundwater domestic right. The claims share the same well in the SENWSE of Section 25, T28N, R46E, Roosevelt County.

2. Both claims received the following issue remark:

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

3. Claim 40S 30133621 also received the following issue remark:

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 15.5 ACRE-FEET PER YEAR.

4. To address the issue remarks, the Court set a deadline of October 9, 2024, for Claimant to file evidence of the historical type of right for both claims and the volume for claim 40S 30133621. (Doc.¹ 1.00).

5. Nothing was filed.

6. The Court then set a deadline of November 20, 2024, for Claimant to show cause why the historical type of right for both claims should not be “use” and the volume should not be 15.5 acre-feet per year. (Doc. 2.00). The Court stated that “if nothing is filed by the deadline” the Court will presume Claimant agrees the historical type of right of both claims should be “use and will treat Claimant’s silence as a self-serving affidavit to support the historical basis of the claims.” The Court also stated that if nothing is filed by the deadline to support a volume for claim 40S 30133621, it will presume Claimant agrees the volume of the claim should be 15.5 acre-feet.

7. Nothing was filed.

¹ “Doc.” Numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

8. Both claims also received a notice-type issue remark. The Court stated in the order consolidating this case that the remark is “for notice purposes only and will be removed at the close of these proceedings.”

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298.

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. 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.

4. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

5. The historical type of right refers to the historical basis of an existing water right as a decreed right, filed appropriation right, reserved right, or use right. A use right is an existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree. Rule 2(a)(71), W.R.C.E.R. For a use right, a statement of claim is considered a self-serving affidavit of a historical type of right and, as a result, the historical type of right is prima facie proof of the date of first use of the water right. § 85-2-227, MCA.

6. Claimant did not respond to the Court's multiple deadlines to file evidence of the historical type of right for the claims to resolve the issue remarks. Therefore, the Court presumes Claimant agrees the historical type of right is "use" and Claimant's silence should be treated as a self-serving affidavit to support the historical basis of the claims.

7. The volume guideline for a domestic claim is $(1.5 \text{ acre-feet} \times \text{Households}) + (2.5 \text{ acre-feet} \times \text{Acres}) = \text{Volume (acre-feet)}$. Rule 19(b)(2), W.R.C.E.R. Therefore, the calculated guideline for claim 40S 30133621 is 15.5 acre-feet.

8. Claimant did not respond to the Court's multiple deadlines to file evidence of the volume for claim 40S 30133621 to resolve the issue remark. Therefore, the Court presumes Claimant agrees the volume for the claim should be 15.5 acre-feet.

9. The notice-type issue remarks on the claims have served their purpose and should be removed.

RECOMMENDATIONS

Based upon the Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above.

Post Decree Abstracts of Water Right Claim for claims 40S 30133620 and 40S 30133621 are served with this Master's Report to confirm the modifications have been made in the DNRC's water right database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Carol C. Johns
2446 Old Darby Rd
Hamilton, MT 59840-9793

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

Water Right Number: 40S 30133620 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: CAROL C JOHNS
2446 OLD DARBY RD
HAMILTON, MT 59840-9793

***Priority Date:** DECEMBER 31, 1915

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** 20.00 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		SENWSE	25	28N	46E	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			SENWSE	25	28N	46E	ROOSEVELT

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.

30133620 30133621

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

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

Water Right Number: 40S 30133621 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: CAROL C JOHNS
2446 OLD DARBY RD
HAMILTON, MT 59840-9793

Priority Date: JANUARY 1, 1915

Type of Historical Right: USE

Purpose (Use): MULTIPLE DOMESTIC

***Flow Rate:** 20.00 GPM

Volume: 15.50 AC-FT

Households: 2

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		SENWSE	25	28N	46E	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	5.00		SENWSE	25	28N	46E	ROOSEVELT
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.

30133620 30133621

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