

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION BETWEEN BULLWHACKER CREEK AND  
MUSSELSHELL RIVER - BASIN (40EJ)

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CLAIMANT: United States of America (Bureau of Land  
Management)

CASE 40EJ-6001-A-2024  
40EJ 64828-00  
40EJ 64829-00

**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 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

On February 9, 2024, the United States of America (“United States”), on behalf of the Bureau of Land Management, filed a motion to amend water right claims 40EJ 64828-00 and 40EJ 64829-00, seeking to amend the legal land descriptions for the point of diversion and place of use. To address the motion, the claims are consolidated into Water Court Case 40EJ-6001-A-2024.

### FINDINGS OF FACT

1. Claims 40EJ 64828-00 and 40EJ 64829-00 are groundwater rights from the Norskog well, a development located on federal land. Claim 40EJ 64828-00 is a wildlife claim and claim 40EJ 64829-00 is a stockwater claim.

2. The Water Court included claims 40EJ 64828-00 and 40EJ 64829-00 in the Preliminary Decree for Basin 40EJ, issued in 2014. The claims received no objections or issue remarks, and the claims were not modified.

3. The point of diversion and place of use for the claims is currently identified as SENENW of Section 21, Township 22 North, Range 22 East, Fergus County.

4. The United States seeks to amend the point of diversion and place of use to SWSE of Section 21, Township 22 North, Range 22 East, Fergus County.

5. The United States asserts that it discovered that the legal land description for the well location was incorrectly claimed while performing maintenance and repairs at the Norskog well in 2023. It verified the precise location of the well as the SWSE of Section 21 via GPS.

6. In support of the proposed amendments, the United States provides maps and affidavits from Bureau of Land Management personnel that locate the Norskog well in the SWSE of Section 21.<sup>1</sup>

### CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of an existing right constitutes prima facie proof of its content. Section 85-2-227, MCA. This

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<sup>1</sup> The United States' motion to amend and its exhibits are viewable in the Water Court's FullCourt Enterprise case management system.

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.

2. The Montana Water Court uses 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. Motions to amend are governed by Section 85-2-233(6), MCA, and Rule 10, W.R.Adj.R.

4. Section 85-2-233(6), MCA, includes requirements for providing notice of motions to amend. If the Court determines the proposed amendments may adversely affect other water users, the Court requires notice and the opportunity to object before approving the amendment. Section 85-2-233(6), MCA.

5. The proposed amendments to claims 40EJ 64828-00 and 40EJ 64829-00 do not adversely affect other water rights as they are a correction to the claim abstracts. The proposed amendments do not make any changes to the actual historical use of the claims on the ground. Notice by publication of this motion to amend is not required. Section 85-2-233(6), MCA.

6. Rule 10, W.R.Adj.R., requires that the motion to amend specify the grounds for the amendment.

7. The grounds supplied by the United States are sufficient to contradict and overcome the prima facie status of the claims. Claims 40EJ 64828-00 and 40EJ 64829-00 should be amended to reflect the SWSNW of Section 21, Township 22 North, Range 22 East, Fergus County, as the point of diversion and place of use.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court amend the claims as described above.

Post Decree Abstracts of Water Right Claim reflecting the recommended amendments are attached to this Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, BETWEEN BULLWHACKER CREEK & MUSSELSHELL RIVER**  
**BASIN 40EJ**

**Water Right Number:** 40EJ 64828-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101-4669

**\*Priority Date:** JULY 11, 1935

**\*Type of Historical Right:** USE

**Purpose (Use):** WILDLIFE

**Flow Rate:** 1.48 GPM

**Volume:** 2.12 AC-FT

**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		SWSE	21	22N	22E	FERGUS

**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			SWSE	21	22N	22E	FERGUS

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**MISSOURI RIVER, BETWEEN BULLWHACKER CREEK & MUSSELSHELL RIVER  
BASIN 40EJ**

**Water Right Number:** 40EJ 64829-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101-4669

**Priority Date:** DECEMBER 31, 1879

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 1.48 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		SWSENW	21	22N	22E	FERGUS

**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			SWSENW	21	22N	22E	FERGUS

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME WELL. 64828-00, 64829-00.