

Montana Water Court
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**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

CLAIMANT: Teruo Chinen

OBJECTOR: United States of America (Dept of Agriculture
Forest Service)

CASE 41I-0088-R-2023
41I 56103-00

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

Claim 41I 56103-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Teruo Chinen. The United States Department of Agriculture, Forest Service (Forest Service) objected to the claim. The claim also received an issue remark. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. Claim 41I 56103-00 appeared in the Basin 41I Preliminary Decree as a domestic claim for a well in the NENENW of Section 17, T11N, R1W, Lewis and Clark County.

2. The claim received the following issue remark:

ON 5/12/2006 DNRC FILED A MEMO STATING THE POINT OF DIVERSION AND PLACE OF USE ARE INCORRECT.

3. The 2006 DNRC memorandum states the well is located in Lot 19A, COS No. 3082204, NWNE of Section 17, T11N, R1W, Lewis and Clark County.

4. The Forest Service objected to the claim, stating:

Statement of claim indicates point of diversion and place of use should be NWNWNE 17 T11N R1W.

5. The Court ordered Claimant to file evidence describing the historically accurate point of diversion and place of use for claim 41I 56103-00 if they did not agree with the DNRC and Forest Service's proposed corrections. Nothing was filed by the deadline.

6. The Court then ordered Claimant to show cause why the point of diversion and place of use should not be modified to Lot 19A, COS No. 3082204, NWNWNE of Section 17, T11N, R1W, Lewis and Clark County. The order stated that if nothing was filed by the deadline, the point of diversion and place of use would be modified as proposed. Nothing was filed by the deadline.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant’s objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

CONCLUSION OF LAW

1. The issue remark and objection overcome the prima facie status of claim 41I 56103-00. The evidence in the claim file shows by a preponderance of the evidence that the historically accurate point of diversion and place of use is Lot 19A, COS No. 3082204 in the NWNWNE of Section 17, T11N, R1W, Lewis and Clark County.

RECOMMENDATIONS

1. The point of diversion and place of use should be modified to the NWNWNE of Section 17, T11N, R1W, Lewis and Clark County.

2. An information remark should be added to the claim clarifying that the point of diversion and place of use are in Lot 19A of COS No. 3082204.

3. The issue remark should be removed from the claim abstract.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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Service via Electronic Mail

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 41I 56103-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: TERUO CHINEN
7320 MOUNTAIN WAY
HELENA, MT 59602

Priority Date: JUNE 1, 1956

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 4.49 GPM

Volume: 1.00 AC-FT

Households: 1

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		NWNWNE	17	11N	1W	LEWIS AND CLARK

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			NWNWNE	17	11N	1W	LEWIS AND CLARK

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE IN LOT 19A OF COS NO. 3082204