

Montana Water Court
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FILED
09/27/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Regina Certalic
40S-0019-I-2024
Reynolds, Brooke
2.00

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

* * * * *

CLAIMANTS: Marlene J. Kent; Maxine Strader

CASE 40S-0019-I-2024
40S 30132601

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 40S 30132601 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 claim did not receive any objections, counterobjections, or notices of intent to appear. Marlene J. Kent and Maxine Strader own the claim. The claim was consolidated into Water Court Case 40S-0019-I-2024 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 40S 30132601 is an exempt ground water stock claim from a developed spring of an unnamed tributary of Wolf Creek. The means of diversion is a spring box.
2. The claim received the following issue remark:
NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.
3. Claimants failed to claim a quantified flow rate for the water right on the statement of claim filed with the DNRC on June 26, 2019. Instead, they claimed “NA” on the statement of claim form.
4. The Water Court must decree a specific flow rate for claims for stock use from a developed spring. Rule 24(b)(1), W.R.C.E.R.
5. The DNRC’s flow rate guideline for a groundwater stock claim from a developed spring is 35.00 gpm. Rule 24(b)(1), W.R.C.E.R.
5. The Court set a deadline for the Claimants to provide evidence of a quantified flow rate. The Court stated that if the Claimants failed to file anything by the deadline, it would add a flow rate of 35.00 gpm. (Doc. 1.00).
6. Claimants did not file anything by the deadline.
7. The remaining issue remark on claim 40S 30132601 is a notice-type issue remark. It is for notice purposes only. The Court stated in the order setting a filing deadline that the remark would be removed from the claim at the close of these proceedings. (Doc. 1.00).

CONCLUSIONS OF LAW

1. 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.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

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 flow rate guideline for a groundwater stock claim is 35.00 gpm. Claimants did not provide the Court with evidence of a flow rate of the claim. Thus, the claim should reflect a flow rate of 35.00 gpm, consistent with the guideline.

6. The notice-type issue remark placed on the claim has served its purpose and should be removed.

RECOMMENDATIONS

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

A Post Decree Abstract of Water Right Claim 40S 30132601 is served with this Master's Report to confirm the recommendations have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Marlene J. Kent
PO Box 531
St Ignatius, MT 59865

Maxine Strader
7041 AA 2 Dr
Wolf Point, MT 59201-9010

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

Water Right Number: 40S 30132601 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MARLENE J KENT
PO BOX 531
ST IGNATIUS, MT 59865

MAXINE STRADER
7041 AA 2 DR
WOLF POINT, MT 59201-9010

***Priority Date:** DECEMBER 31, 1952

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 35.00 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:** SPRING, UNNAMED TRIBUTARY OF WOLF CREEK

Source Type: GROUNDWATER
ALSO KNOWN AS SOUTH SPRING

***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		SWSWSW	1	28N	46E	ROOSEVELT

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

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			SWSWSW	1	28N	46E	ROOSEVELT

Remarks:

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