

Montana Water Court
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MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER
BASIN 41S
PRELIMINARY DECREE

* * * * *

CLAIMANT: Douglas Peterschick

CASE 41S-2103-R-2025

41S 30131630

OBJECTOR: Douglas Peterschick

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 have 13 days from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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

FINDINGS OF FACT

1. The record owner of claim 41S 30131630 is Douglas Peterschick (“Peterschick”).
2. Claim 41S 30131630 was decreed with a Montana Department of Natural Resources and Conservation (“DNRC”) issue remark:

- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

The remark provided notice that claim 41S 30131630 was not included in the previous decree in the basin.

3. Claim 41S 30131630 describes a spring in the NENWSE of Section 1, T14N, R19E, Fergus County; it was claimed with a 1965 priority date. When claim 41S 30131630 was examined, the DNRC did not find record of the spring in the Fergus County groundwater records. Pursuant to procedure, the DNRC claims examiner modified the priority date to the date the Statement of Claim was filed (June 27, 2019) and modified the claim to a “filed” right.

4. Peterschick objected to claim 41S 30131630 on January 26, 2023, indicating:

I feel priority date should be changed to before Jan 1/1961. Mr. Buckentin stated in his affidavit it was in use before 1961. On file #17116 Ernest Buckentin said it was in use as early as 1900.

DATED this _____ day of _____ 2023.

Peterschick attached information to the Objection, including the Affidavit of Gordon Buckentin, and a Declaration of Vested Groundwater Rights. The Declaration of Vested Groundwater Rights is for a claim in the NE of Section 1, T14N, R19E, and it was filed with the Fergus County Clerk and Recorder on December 27, 1963.

GW4
File No. 17116 Approved Stock Form—State Publishing Co., Helena, Montana—1961

ORIGINAL

STATE OF MONTANA
ADMINISTRATOR OF GROUNDWATER CODE
OFFICE OF STATE ENGINEER

Declaration of Vested Groundwater Rights
(Under Chapter 237, Montana Session Laws, 1961)

1. Orville L. Peterschick, of Healy
(Name of Appropriator) (Address) (Town)
County of Fergus State of Montana
have appropriated groundwater according to the Montana laws in effect prior to January 1, 1962, as follows:



2. The beneficial use on which the claim is based. Healy water
3. Date or approximate date of earliest beneficial use; and how continuous the use has been. 1900
4. The amount of groundwater claimed (in miner's inches or gallons per minute). 30, 000
5. If used for irrigation, give the acreage and description of the lands to which water has been applied and name of the owner thereof
25 acres
6. The means of withdrawing such water from the ground and the location of each well or other means of withdrawal
Hand pump

NE 1/4 Sec. 1 T14 R19E
Indicate point of appropriation and place of use, if possible. Each small square represents 10 acres

The filers of claim 41S 30131630 filed a Declaration of Vested Groundwater Right (Form GW4); the form GW4 indicates the date of earliest beneficial use was “1900” for a spring in the NE of Section 1, T14N, R19E. The GW form for the spring in the NE of Section 1, T14N, R19E was attached to the Statement of Claim for claim 41S 30131630.

5. An Order was issued setting a deadline for Peterschick to show that the spring described by claim 41S 30131630 is the same spring shown on the GW4 form attached to his Objection, showing that the priority date for the claim should be 1900. (Doc.¹1.00). The Order indicated that if nothing were filed by the deadline, it would be determined that Douglas Peterschick decided not to pursue the Objection, and a Master’s Report would be issued recommending no modifications be made to the elements of the claim. Nothing was filed by the deadline.

PRINCIPLES OF LAW

1. 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.

2. A properly filed Statement of Claim for an existing water right is *prima facie* proof of its content. Mont. Code Ann. § 85-2-227 (2025); Rule 10, W.R.Adj.R.

3. *Prima facie* proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that

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

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

4. Between January 1, 1962 and July 1, 1973, appropriators of groundwater were required to comply with the 1961 Groundwater Code. Sections 89-2911 through 89-2913, RCM (1965).

CONCLUSIONS OF LAW

1. No information overcoming the *prima facie* status of claim 41S 30131630 has been provided by Objector Douglas Peterschick, and the elements of the claim should remain as claimed.

2. The issue remark decreed on claim 41S 30131630 is a notice-type issue remark. As no other objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. No modifications should be made to the elements of claim 41S 30131630.
2. The issue remark should be removed from the claim abstract.

An abstract is enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Douglas Peterschick
1678 Upper Spring Creek Road
Lewistown, MT 59457-8664

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S

Water Right Number: **41S 30131630** STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners:
DOUGLAS PETERSCHICK
1678 UPPER SPRING CREEK ROAD
LEWISTOWN, MT 59457-8664

***Priority Date:** JUNE 27, 2019
THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

***Type of Historical Right:** FILED

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:** SPRING, UNNAMED TRIBUTARY OF BIG SPRING CREEK, EAST FORK
Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSE	1	14N	19E	FERGUS

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>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENWSE	1	14N	19E	FERGUS