

Montana Water Court  
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**FILED**  
02/20/2025  
Sara Calkins  
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Montana Water Court  
STATE OF MONTANA  
By: Elizabeth Draper  
40S-0016-I-2024  
Nordlund, Julia  
9.00

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

\*\*\*\*\*

CLAIMANTS: David A. Panasuk; Linda M. Panasuk; Timothy  
Panasuck

**CASE 40S-0016-I-2024**  
40S 30134016  
40S 30134017  
40S 30134024  
40S 30134026  
40S 30134027  
40S 30134030  
40S 30134034  
40S 30134035

**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 30134016, 40S 30134017, 40S 30134024, 40S 30134026, 40S

30134027, 40S 30134030, 40S 30134034, and 40S 30134035 are owned by David, Timothy, and Linda Panasuk. The claims were decreed DNRC issue remarks. No objections, counterobjections, or NOIAs were filed on these claims. The claims were consolidated into Water Court Case 40S-0016-I-2024.

### FINDINGS OF FACT

1. DNRC Water Resource Specialist Ryan Hartwell filed two Memorandum including his review of DNRC issue remarks.

2. On January 17, 2025, Mr. Hartwell filed a Memorandum of the claims in this case. The Memorandum recommended the disposition of issue remarks on the some of the claims as follows:

40S 30134016

RECOMMENDATION:

With the email delivered to the DNRC outlining the claimant's intent with the means, the D50 issue remark can be resolved. It is the DNRC's recommendation to remove the D50 remark from Claim 40S 30134016 and modify the means of diversion from livestock direct from source to well. See marked up Review Abstract 40S 30134016.

40S 30134017

RECOMMENDATION:

With the email delivered to the DNRC outlining the claimant's intent with the means, the D50 issue remark can be resolved. It is the DNRC's recommendation to remove the D50 remark from Claim 40S 30134017 and modify means of diversion from livestock direct from source to undeveloped spring. See marked up Review Abstract 40S 30134017.

On February 12, 2025, Mr. Hartwell emailed the Court and stated that he made a mistake on his recommendation for claim 40S 30134017 and that it should remain livestock direct from source.

40S 30134024

RECOMMENDATION:

With the email delivered to the DNRC outlining the two different wells, the D91 issue remark can be resolved. It is the DNRC's recommendation to remove the D91 remark from Claim 40S 30134024 and any duplicate right wording in the Related Rights tab. See marked up Review Abstract 40S 30134024.

40S 30134026

RECOMMENDATION:

At this time, Ownership Update form has not been received by the DNRC Glasgow regional office. Until the paperwork is received that fills the requirements of an Ownership Update, it is DNRC's recommendation that the O55 remark stays on until the ownership issue is resolved. The O55 remark should be edited to remove Robert E. Mattingley's name. See marked up Review Abstract 40S 30134026.

On January 21, 2025, counsel for Claimants filed a Status Report which stated there was a delay in obtaining signatures from her clients. In previous

correspondence with DNRC, it appears that Claimants were in agreement with each of the recommendations from Mr. Hartwell. On Claim 40S 30134026 Claimants state, “Linda Panasuk should not be on this water right. We will send you the water right update.” The Court does not require an ownership update form to remove a Claimant from the abstract. The statements from Claimant’s counsel are sufficient for the Court to proceed with these recommendations.

40S 30134027

RECOMMENDATION:

With the email delivered to the DNRC outlining the Claimants’ intent with the means of diversion, the D50 issue remark can be resolved. It is the DNRC’s recommendation to remove the D50 remark from Claim 40S 30134027 and modify means of diversion from livestock direct from source to developed spring. See marked up Review Abstract 40S 30134027.

40S 30134030

RECOMMENDATION:

With the email delivered to the DNRC outlining the Claimants’ intent with the means of diversion, the D50 issue remark can be resolved. It is the DNRC’s recommendation to remove the D50 remark from Claim 40S 30134030 and modify means of diversion from livestock direct from source to developed spring. See marked up Review Abstract 40S 30134030.

40S 30134034

RECOMMENDATION:

With the email delivered to the DNRC outlining the Claimants’ intent with the means, the D50 issue remark can be resolved. It is the DNRC’s recommendation to remove the D50 remark from Claim 40S 30134034 and modify means of diversion from livestock direct from source to pipeline. See marked up Review Abstract 40S 30134034.

40S 30134035

RECOMMENDATION:

With the email delivered to the DNRC outlining the two different wells, the D91 issue remark can be resolved. It is the DNRC’s recommendation to remove the D91 remark from claim 40S 30134035 and any duplicate right wording in the Related Rights tab. See marked up Review Abstract 40S 30134035. A withdraw form is being filled out by the claimant’s representative and eventually will be submitted to the Water Court. When the withdraw form is received by the Water Court it is DNRC’s recommendation to withdraw Claim 40S 30134035.

## CONCLUSIONS OF LAW

1. 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. Section 85-2-248(3), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 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 an element of the prima facie claim is incorrect. This is the burden of

proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. 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.

4. 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.

5. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. When resolving issue remarks, the Montana 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.

7. The above changes resolve all issue remarks on these claims.

### RECOMMENDATIONS

The changes recommended above should be adopted. Post Decree Abstracts of Water Rights Claims are served with the Report to confirm that the recommendations have been made in the state’s centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service Via Electronic Mail:**

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

**Water Right Number:** 40S 30134016 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TIMOTHY PANASUK  
322 US HIGHWAY 2  
BAINVILLE, MT 59212-9615

**Priority Date:** JULY 31, 1940

**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		NENENW	11	27N	59E	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			NENENW	11	27N	59E	ROOSEVELT

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

**Water Right Number:** 40S 30134017 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TIMOTHY PANASUK  
322 US HIGHWAY 2  
BAINVILLE, MT 59212-9615

**Priority Date:** DECEMBER 31, 1908

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 9.00 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 RED BANK CREEK

**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		NESWNE	32	28N	59E	ROOSEVELT

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			NESWNE	32	28N	59E	ROOSEVELT

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

**Water Right Number:** 40S 30134024 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID A PANASUK  
322 US HWY 2  
BAINVILLE, MT 59212-9615

LINDA M PANASUK  
322 US HWY 2  
BAINVILLE, MT 59212-9615

**Priority Date:** DECEMBER 31, 1908

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 9.00 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		NESWNE	3	27N	59E	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			NESWNE	3	27N	59E	ROOSEVELT

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

**Water Right Number:** 40S 30134026 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID A PANASUK  
322 US HWY 2  
BAINVILLE, MT 59212-9615

TIMOTHY PANASUK  
322 US HIGHWAY 2  
BAINVILLE, MT 59212-9615

**Priority Date:** MAY 25, 1945

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 1.68 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		W2	9	29N	59E	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			W2	9	29N	59E	ROOSEVELT



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

**Water Right Number:** 40S 30134027 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID A PANASUK  
322 US HWY 2  
BAINVILLE, MT 59212-9615

LINDA M PANASUK  
322 US HWY 2  
BAINVILLE, MT 59212-9615

**Priority Date:** DECEMBER 31, 1908

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 2.52 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 HORSE TIED CREEK

**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		SENE	3	27N	59E	ROOSEVELT

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DEVELOPED SPRING

**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			SENE	3	27N	59E	ROOSEVELT

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

**Water Right Number:** 40S 30134030 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TIMOTHY PANASUK  
322 US HIGHWAY 2  
BAINVILLE, MT 59212-9615

**Priority Date:** DECEMBER 31, 1908

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 5.00 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 LITTLE MUDDY CREEK

**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		SWSWSE	28	28N	59E	ROOSEVELT

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DEVELOPED SPRING

**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			SWSWSE	28	28N	59E	ROOSEVELT

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

**Water Right Number:** 40S 30134034 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TIMOTHY PANASUK  
322 US HIGHWAY 2  
BAINVILLE, MT 59212-9615

**Priority Date:** DECEMBER 31, 1908

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 2.52 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 HORSE TIED CREEK

**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		SWSWNE	2	27N	59E	ROOSEVELT

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**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			SWSWNE	2	27N	59E	ROOSEVELT

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

**Water Right Number:** 40S 30134035 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** DAVID A PANASUK  
322 US HWY 2  
BAINVILLE, MT 59212-9615

LINDA M PANASUK  
322 US HWY 2  
BAINVILLE, MT 59212-9615

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** STOCK

**Flow Rate:**

**Volume:**

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.