

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

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CLAIMANTS: Ross V. King; Paul King

CASE 40S-0026-I-2024
40S 30145275

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 30145275 appeared in the Interlocutory Decree for the Lower Missouri River, Below Fort Peck Dam (Basin 40S) with Montana Department of Natural Resources and Conservation issue remarks. The claim did not receive objections, counterobjections, or notices of intent to appear. Paul and Ross King own the claim. The

claim was consolidated into Water Court Case 40S-0026-I-2024 to resolve the issue remarks placed on the claim.

FINDINGS OF FACT

1. Claim 40S 30145275 is a stockwater right.
2. The claim received the following issue remarks in the Interlocutory Decree:
NO MEANS OF DIVERSION WAS CLAIMED.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40S DECREE ISSUED 12/29/1999.

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

NO PERIOD OF DIVERSION HAS BEEN CLAIMED.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE STREAM CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

NO PERIOD OF USE HAS BEEN CLAIMED.

THE CLAIMED PLACE OF USE COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

NO PRIORITY DATE WAS CLAIMED.

NO SOURCE NAME OR SOURCE TYPE HAS BEEN CLAIMED.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

NO VOLUME HAS BEEN CLAIMED.
3. In the Order Consolidating Case and Setting Filing Deadline, the Court stated that the issue remarks suggest that “the essential elements for an existing water right under the Water Use Act have not been claimed.” (Doc.¹ 1.00).
4. The Court set a filing deadline of November 8, 2024, and stated, “If nothing is filed by the deadline, the claim may be dismissed for being insufficient to establish a basis for a prima facie water right claim.” *Id.*
5. Nothing was filed by the deadline.
6. The Court set another deadline of December 16, 2024, to show cause why the claim should not be dismissed for failing to have the essential elements of a water

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

right. The Court stated that “If nothing is filed by the deadline, the Court will presume Claimant agrees the claim should be dismissed and that there is not enough evidence to establish the water right claim.” (Doc. 2.00).

7. Nothing was filed by the deadline.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298.

2. A properly filed claim of an existing right or an amended claim of existing 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 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.

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. Section 85-2-248(3), MCA.

5. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA.

6. Section 85-2-234(6), MCA, provides which elements are essential for a water right claim. The statute states:

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right, as follows:
 - (i) by flow rate for direct flow rights, such as irrigation rights;
 - (ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or
 - (iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land, if any, to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the inclusive dates during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent of the right.

7. Claimants did not file a response to the Court's deadlines. The Court assumes Claimants agree the claim does not contain the essential elements for final decree and it should be dismissed.

8. Claim 40S 30145275 should be dismissed.

RECOMMENDATIONS

Based upon the 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 for claim 40S 30145275 is served with this Master's Report to confirm the recommendations have been made in the DNRC's water right database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Ross V. King
Paul King
1131 13th Ave
Laurel, MT 59044

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

Water Right Number: 40S 30145275 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: PAUL KING
1131 13TH AVE
LAUREL, MT 59044

ROSS V KING
1131 13TH AVE
LAUREL, MT 59044-1657

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.