

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

\* \* \* \* \*

CLAIMANT: Maxine Strader

CASE 40S-0029-I-2024  
40S 30133617

**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 30133617 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 but no objections,

counterobjections, or notices of intent to appear. Maxine Strader owns the claim. The Water Court consolidated the claim into Water Court Case 40S-0029-I-2024 to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 40S 30133617 is a groundwater stock right from North Spring with a priority date of December 31, 1952.

2. The claim received the following substantive issue remark:

NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

3. Ms. Strader did not claim a flow rate on the statement of claim filed on June 28, 2019.

4. The DNRC's flow rate guideline for groundwater stock claims is 35 gallons per minute ("gpm").

5. In the Order Consolidating Case and Setting Filing Deadline, the Court set a deadline of January 6, 2025, for Ms. Strader to file evidence of the flow rate. (Doc.<sup>1</sup> 1.00). The Order stated, "If nothing is filed by the deadline, the Court will decree the flow rate as 35 gpm and close this case." (Doc. 1.00).

6. Nothing was filed by the deadline.

7. The claim also received the following notice-type issue remark:

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

8. The remark has served its purpose of providing notice.

### 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 an existing right is prima facie proof of its content. Section 85-2-227, MCA. This prima

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<sup>1</sup> "Doc." Numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

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. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

6. Rule 24(b)(1), W.R.C.E.R. states “The flow rate guideline for wells, developed springs, pumped diversions, or gravity flow pipelines will be 35 gallons per minute.”

7. Ms. Strader did not respond to the Court’s deadline to file evidence of the flow rate and the Court presumes she agrees with the DNRC’s flow rate guideline. The flow rate should be 35 gpm.

8. The notice-type issue remark has served its purpose and should be removed.

### RECOMMENDATIONS

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

A Post Decree Abstract of Water Right Claim for claim 40S 30133617 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:**

Maxine Strader  
7041 AA 2Dr  
Wolf Point, MT 59201

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

**Water Right Number:** 40S 30133617 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** 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 NORTH 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		NWNWSW	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			NWNWSW	1	28N	46E	ROOSEVELT

**Remarks:**

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