

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

CLAIMANTS: Terry H. Traeger; Christine R. Traeger

CASE 40S-0030-I-2024
40S 30127569

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 30127569 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. Christine and Terry Traeger own the claim. The Water Court consolidated the claim into Water Court Case 40S-0030-I-2024 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 40S 30127569 is a domestic groundwater right with a priority date of December 31, 1949. The water right serves one household and irrigates 0.50 acres of lawn and garden.
2. The claim received the following substantive issue remark.
NO VOLUME HAS BEEN CLAIMED.
3. The volume guideline for a domestic water right claim is $(1.5 \text{ acre-feet} \times \text{Households}) + (2.5 \text{ acre-feet} \times \text{Acres}) = \text{Volume (acre-feet)}$. Rule 19(b)(2), W.R.C.E.R.
4. Because the maximum acres are 0.50 acres and the household count is one, the volume guideline is 2.75 acre-feet.
5. In the Order Consolidating Case and Setting Filing Deadline, the Court set a deadline of January 10, 2025, for the Claimants to file evidence of the volume. The Order stated, “If nothing is filed by the deadline, the Court will presume Claimants agree that the volume of the claim is 2.75 acre-feet.” (Doc.¹ 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.

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

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. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have an 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 19(b)(2), W.R.C.E.R. establishes the volume guideline for domestic claims as one-half acre-feet per household and two and one-half acre-feet per acre of lawn and garden.

7. Claimants did not respond to the Court's deadline to file evidence of the volume and the Court presumes they agree with the volume guideline. The volume should be 2.75 acre-feet.

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 30127569 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:

Terry H. Traeger
Christine R. Traeger
1218 Rd 2060
Bainville, MT 59212

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

Water Right Number: 40S 30127569 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: CHRISTINE R TRAEGER
1218 RD 2060
BAINVILLE, MT 59212-9628

TERRY H TRAEGER
1218 RD 2060
BAINVILLE, MT 59212-9628

***Priority Date:** DECEMBER 31, 1949

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 2.75 AC-FT

Households: 1

Maximum Acres: 0.50

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		SENESE	23	27N	49E	MCCONE

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	0.50		SENESE	23	27N	49E	MCCONE

Total: 0.50

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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