

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: David Vaira

CASE 40S-0031-I-2024
40S 30133500

NOTICE OF FILING 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 30133500 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. David Vaira owns the claim. The Water Court consolidated the claim into Water Court Case 40S-0031-I-2024 to resolve the issue remarks. (Doc.¹ 1.00).

FINDINGS OF FACT

1. Claim 40S 30133500 is a groundwater stock right from a developed spring of an unnamed tributary of West Charlie Creek.
2. The claim received the following substantive issue remarks:

THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.
3. In the Order Consolidating Case and Setting Filing Deadline, the Court stated that the second issue remark provides no evidence to prove that a developed spring inaccurately reflects the historical means of diversion of the water right. The Court further stated, “The issue remark will be removed at the close of the proceedings.” (Doc. 1.00).
4. On the statement of claim, a priority date of “1950s” was claimed. No historical type of right was claimed.
5. The Water Court set a deadline of January 17, 2025, for Claimant to file evidence of the priority date and type of historical right. The Court stated “If nothing is filed by the deadline, the Water Court will modify the priority date to December 31, 1959, and the historical type of right to ‘use.’”
6. Nothing was filed by the deadline.

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

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 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 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. “Priority date” should be expressed in month, day, and year. Rule 2(a)(55), W.R.C.E.R. The priority date may be changed to complete the day, month, or general year when the claimed priority date is incomplete. Rule 13(f), W.R.C.E.R. If no day, month, or general year is claimed, the last day, month, and year of that decade is used. Rule 13(f)(3)(i)-(iii), W.R.C.E.R.

7. The type of historical right refers to the historical basis of an existing water right as a decreed right, filed appropriation right, reserved right, or use right. Rule 2(a)(70), W.R.C.E.R. A use right is an existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree. Rule 2(a)(71), W.R.C.E.R.

8. Claimant did not respond to the Court’s deadline to provide evidence of the priority date or the type of historical right. The Court presumes Claimant agrees the priority date should be December 31, 1959, the last day, month, and year of the 1950s, and the type of historical right should be “use.”

9. 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 30133500 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:

David Vaira
32704 Hwy 201
Lambert, MT 59243-9428

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

Water Right Number: 40S 30133500 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: DAVID VAIRA
32704 HWY 201
LAMBERT, MT 59243-9428

Priority Date: DECEMBER 31, 1959

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** 15.00 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 WEST CHARLIE 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		SESE	21	25N	53E	RICHLAND

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			SESE	21	25N	53E	RICHLAND