

Montana Water Court
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FILED
07/30/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40S-0032-I-2024
Stern, Anika
10.00

MONTANA WATER COURT
LOWER MISSOURI DIVISION
MISSOURI RIVER BELOW FORT PECK DAM BASIN
BASIN 40S
INTERLOCUTORY DECREE

* * * * *

CLAIMANT: PFN Property LLP

NOTICE OF INTENT TO APPEAR: United States, DOI Bureau of
Land Management

CASE 40S-0032-I-2024
40S 30132354

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

FINDINGS OF FACT

1. PFN Property LLP ("PFN") is the record owner of claim 40S 30132354.¹

2. Claim 40S 30132354 was decreed with DNRC issue remarks:

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

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 10/01/2020, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY JACK W NICKELS TRUST.

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OF THE PLACE OF USE APPEARS TO BE ON USDI / BLM LAND.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

3. United States, DOI Bureau of Land Management ("BLM") filed a Notice of Intent to Appear ("NOIA") for claim 40S 30132354.

4. On July 11, 2025, current Claimant PFN, former Claimant Nickels Family Revocable Living Trust, and the BLM filed a Stipulation addressing the issue remarks decreed on claim 40S 30132354 and the NOIA concerns. (Doc. 9.00).

5. Claim 40A 30132354 is a claim for livestock direct from source use on Plum Patch Coulee. As recounted in the Stipulation, the Statement of Claim identified points of diversion and places of use in the E2 of section 26, the W2 of Section 25, and the SW of Section 24, Township 26 North, Range 42 East, encompassing all Plum Patch Coulee and two Unnamed Tributaries. However, during examination of claim 40A 30132354, the DNRC appears to have removed the points of diversion in Sections 24 and 25; the points of diversion and places of use for livestock direct from source claims should be identical.

According to information provided by the parties:

The points of diversion/places of use in Sections 25 and 26 are on federal grazing land administered by BLM. Most of that land is within the Betsy Coulee Allotment...

The point of diversion/place of use in SW Section 24 is on private land.

(Doc. 9.00). The parties Stipulated the following modifications be made to claim 40A 30132354:

¹ Ownership updates have been processed after the July 20, 2023 Interlocutory Decree was issued. The ownership updates address the ownership issue remarks noted below.

***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 | | E2 | NESE | 28 | 28N | 42E MCCONE |
| Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | | |
| 2 | | W2 | SENE | 25 | 28 | 28N 42E MCCONE |
| Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | | |
| 3 | | SW | SENE | 24 | 28 | 28N 42E MCCONE |
| Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | | |

***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 | | | E2 | 28 | 28N | 42E | MCCONE |
| 2 | | | W2 | 25 | 28N | 42E | MCCONE |
| 3 | | | SW | 24 | 28N | 42E | MCCONE |

CMPU: STOCK ACCESS TO THE SOURCE ON FEDERAL LAND OCCURS ONLY AS AUTHORIZED BY FEDERAL GRAZING PERMITS.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The remark indicating that claim 40S 30132354 was not included in the Basin 40S Decree issued on 12/29/1999 is a notice-type issue remark and has served its purpose. As no objections were filed, no further proceedings are required because of the remark.

RECOMMENDATIONS

1. Claim 40S 30132354 should be modified as shown in Finding of Fact 5, resolving the NOIA concerns and the point of diversion issue remark.

2. The issue remarks should be removed from claim 40S 30132354.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

PFN Property LLP
P.O. Box 529
Nashua, MT 59248

Service Via Electronic Mail:

Judith Coleman, Trial Attorney
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ENRD US Department of Justice
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BELOW FORT PECK DAM
BASIN 40S

Water Right Number: 40S 30132354 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: PFN PROPERTY LLP
PO BOX 529
NASHUA, MT 59248-0529

Priority Date: MAY 27, 1961

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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: PLUM PATCH COULEE

Source Type: SURFACE WATER

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 | | E2 | 26 | 26N | 42E | MCCONE |
| Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | | |
| 2 | | W2 | 25 | 26N | 42E | MCCONE |
| Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | | |
| 3 | | SW | 24 | 26N | 42E | MCCONE |
| 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 | | | E2 | 26 | 26N | 42E | MCCONE |
| 2 | | | W2 | 25 | 26N | 42E | MCCONE |
| 3 | | | SW | 24 | 26N | 42E | MCCONE |

STOCK ACCESS TO THE SOURCE ON FEDERAL LAND OCCURS ONLY AS AUTHORIZED BY FEDERAL GRAZING PERMITS.