

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Dana Fejes; Douglas A. Fejes; Nichols Family Trust;
Heather L. Pegram; Shane L. Pegram

CASE 41I-1032-R-2024

41I 190732-00

41I 190733-00

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

The water right listed above appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. Claims 41I 190732-00 and 41I 190733-00 each received an issue remark identifying potential legal or factual issues with the water right. The Water Court is required to address these issue remarks.

The claims were consolidated into Case 41I-1032-R-2024 and an Order Requiring the Claimants to work with the DNRC was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Each of the above-captioned claims received the following substantive issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE FORM GW2 , NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, IS 06/29/1973.

2. On September 30, 2024, the Court consolidated the claims and issued an order for the Claimants to work with the DNRC to address and resolve the issue remarks.

3. On February 24, 2025, DNRC Water Resource Specialist Kirsten Walsh filed a *Memorandum* in this matter. Ms. Walsh states that at the time of filing the *Memo*, the DNRC had not received any claimant contact. Further, the DNRC notes that based on the 1961 Groundwater Code, the priority date for groundwater claims by means of well is the date the notice of completion was filed with the respective county. In this instance, each claims' GW2 Notice of Completion form was filed on June 29, 1973, while the claimed priority date was listed as April 17, 1962. Therefore, the DNRC made recommendations to facilitate resolution of the issue remarks. Those recommendations are as follows:

RECOMMENDATION(S):

For claim 41I 190732-00 the DNRC recommends changing the priority date to the date which the GW 2 form was filed with Lewis & Clark County. The DNRC recommends the PR3Z issue remark be removed.

For claim 41I 190733-00 the DNRC recommends changing the priority date to the date which the GW 2 form was filed with Lewis & Clark County. The DNRC recommends the PR3Z issue remark be removed.

4. On February 25, 2025, the Court issued an Order Setting Filing Deadline for the Claimants to file a statement if they disagreed with the above-listed recommendations from the DNRC. Nothing was filed by the deadline. The Order Setting Filing Deadline included the following language:

ORDERED that the deadline is **March 26, 2025**, for claimants Dana Fejes, Douglas Fejes, Hether Pegram, Shane Pegram, and Nichols Family Trust to file a written response to the DNRC recommendations *if they disagree with these recommendations*. If no written response is filed by the above-listed deadline, the Court will conclude that the Claimant agrees with the DNRC recommendations.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

CONCLUSION OF LAW

1. The information in the record is sufficient to resolve the substantive issue remarks appearing on each of the above-captioned claims. Based on the information contained Ms. Walsh's *Memo*, and the lack of response to the February 25, 2025 Order Setting Filing Deadline, the claims should be modified as described in Finding of Fact No. 3. The substantive issue remarks should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify each claim by changing the priority date from April 17, 1962, to June 29, 1973, and remove all issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Dana Fejes
Douglas A. Fejes
2501 York Rd
Helena, MT 59602

Nichols Family Trust
% Thomas G. Nichols, Trustee
3548 East Shore Dr
Helena, MT 59602

Heather L. Pegram
Shane L. Pegram
2505 York Rd
Helena, MT 59602

Shane L. Pegram
~~**19614 Linden Ave N**~~
~~**Seattle, WA 98133**~~

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Data\vol)\Share\WC-BASIN FOLDERS\41I PD\41I Cases\1032\41I-1032-R-2024 MR (multiple claims, 248 memo filed, no response to 248 deadline, make changes per memo and remove IRs) 5-14-2025 cdc.docx

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 41I 190732-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

DANA FEJES
2501 YORK RD
HELENA, MT 59602-9590

DOUGLAS A FEJES
2501 YORK RD
HELENA, MT 59602-9590

HEATHER L PEGRAM
2505 YORK RD
HELENA, MT 59602-9590

SHANE L PEGRAM
19614 LINDEN AVE N
SEATTLE, WA 98133-3537

NICHOLS FAMILY TRUST
% NICHOLS THOMAS G TRUSTEE
3548 EAST SHORE DR
HELENA, MT 59602-9737

Priority Date: JUNE 29, 1973

Type of Historical Right: FILED

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: GROUNDWATER

Source Type: GROUNDWATER
ALSO KNOWN AS IKES WELL

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		NWNENE	15	10N	3W	LEWIS AND CLARK

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			SWSESE	10	10N	3W	LEWIS AND CLARK
2			N2NE	15	10N	3W	LEWIS AND CLARK

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.

190732-00 190733-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I

Water Right Number: 41I 190733-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: HEATHER L PEGRAM
2505 YORK RD
HELENA, MT 59602-9590

SHANE L PEGRAM
19614 LINDEN AVE N
SEATTLE, WA 98133-3537

Priority Date: JUNE 29, 1973

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 2.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER
ALSO KNOWN AS IKES WELL

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		NWNENE	15	10N	3W	LEWIS AND CLARK

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	1.00		NWNENE	15	10N	3W	LEWIS AND CLARK
Total:	1.00						

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.