

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

CLAIMANTS: Daniel B. Bidegaray

CASE 40S-6001-A-2023
40S 168830

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

On December 17, 2023, Claimant Daniel Bidegaray submitted a Motion to Amend claim 40S 168830-00. The Motion is based on a typographical error found by DNRC while performing an ownership transfer.

FINDINGS OF FACT

1. The original Statement of Claim for 40S 168830-00 claimed a place of use ID 2 in the NWNWNE Sec. 2, Twp 26N, Rge 54E.
2. The Amendment from Claimant states the POU ID 2 should be NWNWNE Sec. 2, Twp **25N**, Rge. 54E.
3. The map attached to the Motion shows the request accurately reflects historical usage.
4. The error regarding the legal descriptions of the place of use went unnoticed during the Temporary Preliminary Decree.
5. The change to the place of use would neither result in an expansion of the water right nor negatively impact anyone other than Claimant and thus results in no need for notice pursuant to Section 85-2-233(6), MCA.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶33, 357 Mont. 348, 240 P.3d 628.
2. 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.

3. Pursuant to § 85-2-227(2), MCA:

A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

4. The evidence entered into the record is sufficient to support making the correction above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

Bidegaray, Daniel B.
1700 W Koch Street Suite 5
Bozeman, MT 59715-4148

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

Water Right Number: 40S 168830-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: DANIEL B BIDEGARAY
1700 W KOCH ST STE 5
BOZEMAN, MT 59715-4148

Priority Date: DECEMBER 31, 1963

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate:

NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 21.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 14.00

Source Name: UNNAMED TRIBUTARY OF EAST CHARLIE CREEK

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		SEWNNE	2	25N	54E	RICHLAND

Period of Diversion: FEBRUARY 1 TO MAY 31

Diversion Means: DIVERSION DAM

Period of Use: FEBRUARY 1 TO MAY 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	9.00		S2SWSE	35	26N	54E	RICHLAND
2	5.00		NWNWNE	2	25N	54E	RICHLAND

Total: 14.00