

41G-0190-R-2021  
December 6, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Holt & Baker Ranches

**CASE 41G-0190-R-2021**

41G 206747-00

OBJECTORS: Holt & Baker Ranches; United States of America (Department of Agriculture Forest Service)

NOTICE OF INTENT TO APPEAR: John R. Patritti

**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, conclusion 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

Water right claim 41G 206747-00 appeared in the Preliminary Decree for the Jefferson River (Basin 41G) issued on February 15, 2018. The claim received objections from the Claimant and the United States Department of Agriculture – Forest Service (United States), a notice of intent to appear from John Patritti, and issue remarks from the Department of Natural Resources and Conservation (DNRC) identifying potential legal or factual issues with the claim. The claim was consolidated into case 41G-0190-R-2021 to address the objections and issue remarks.

### FINDINGS OF FACT

1. Claim 41G 206747-00 is a stockwater claim to water from Dry Creek. The United States objected to the claim's point of diversion ID No. 3, which it contended was located on National Forest System Land.

2. On July 6, 2021, the United States submitted a Stipulation to Resolve Objections (Stipulation), signed by Mark Widerschein on behalf of the United States, Melissa Baker on behalf of Holt and Baker Ranches, and John Patritti. The Stipulation requests the following modification to reflect the claim's point of diversion ID No. 3 on private land:

<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>
3			SESESE	7	1S	6W	Silver
			<u>SWSWSW</u>	<u>8</u>			Bow

3. This modification corrects the claim to reflect stock use from Dry Creek on the Claimant's property directly adjacent to the National Forest System Land where the diversion was previously claimed.

4. The Claimant objected to the claim seeking to address issue remarks on the claim. The first issue remark the Claimant sought to address states the following:

THE POINTS OF DIVERSION APPEAR TO BE INCORRECT. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

The Claimant's objection stated that the Claimant believed the points of diversion were accurate as they appeared in the Preliminary Decree. The DNRC did not include the

information it relied upon in questioning the points of diversion, and a DNRC note in the claim file suggests only that the point of diversion ID No. 11 is “potentially, S2NW 22 1S 6W.” The points of diversion for this claim were previously addressed in a 1992 stipulation and a February 10, 1993, Master’s Report. Therefore, except for the Stipulation’s proposed modification to POD ID No. 3 discussed above, it appears the locations of the points of diversion are accurate as decreed.

5. The Claimant also sought to address the following issue remark in its objection:

IT APPEARS HOYT DITCH SHOULD BE PART OF THIS CLAIM. IT DIVERTS FROM DRY CREEK IN THE SWSWSW SEC 8, T1S, R6W AND FLOWS THROUGH LITTLE CHERRY CREEK IN THE SW OF SECTION 16 AND INTO LITTLE DRY CREEK IN THE NW OF SEC 21.

The Court requested information regarding this ditch name issue remark and on August 2, 2021, John Patritti, who works the ranch, responded on behalf of Holt and Baker Ranches stating that “Holt Ditch” should be added to points of diversion ID Nos. 3 (in the SWSWSW of Section 8) and 9 (in the SWNESW of Section 16). These modifications are consistent with the DNRC issue remark.<sup>1</sup>

6. This claim was also decreed with the following information remark pertaining to the ditch and conveyance system:

DRY CREEK WATER IS DIVERTED BY A DITCH TO LITTLE CHERRY CREEK WHICH CONVEYS IT TO PLACES OF USE IN SEC. 17, 16, 15, 22, AND 23 TWP 01S RGE 06W SIVER BOW AND MADISON COUNTIES, AND TO A SECONDARY DITCH DIVERSION AT SWNESW SEC. 16 TWP 01S RGE 06W SILVER BOW COUNTY INTO DRY CREEK, ALSO KNOWN AS LITTLE DRY CREEK, WHICH CONVEYS IT TO PLACES OF USE IN SEC. 21, 22, 23, AND 25 TWP 01S RGE 06W MADISON COUNTY AND SEC. 30 AND 32 TWP 01S RGE 05W MADISON COUNTY.

Mr. Patritti’s response states that this informational remark should be updated to reflect the inclusion of Holt Ditch, and section 16 should be removed from the information remark because it is not part of the place of use for this claim. Upon review of the remark, the Court determined that section 17 should also be removed from the

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<sup>1</sup> The DNRC ditch name issue remark references “Hoyt Ditch.” However, the Claimant informed the Court that this was a clerical error. There is no “Hoyt Ditch” in the area, and the ditch referenced by the issue remark should be “Holt Ditch.”

information remark as it is not included in the place of use for this claim. The places of use in section 17 were removed from this claim pursuant to a February 10, 1993, Master's Report, but the Court mistakenly failed to remove section 17 from the informational remark at that time. The information remark on the claim should read as follows:

DRY CREEK WATER IS DIVERTED BY A HOLT DITCH TO LITTLE CHERRY CREEK WHICH CONVEYS IT TO PLACES OF USE IN SEC. 47, 46, 15, 22, AND 23 TWP 01S RGE 06W SILVER BOW AND MADISON COUNTIES, AND TO A SECONDARY DITCH DIVERSION AT SWNESW SEC. 16 TWP 01S RGE 06W SILVER BOW COUNTY INTO DRY CREEK, ALSO KNOWN AS LITTLE DRY CREEK, WHICH CONVEYS IT TO PLACES OF USE IN SEC. 21, 22, 23, AND 25 TWP 01S RGE 06W MADISON COUNTY AND SEC. 30 AND 32 TWP 01S RGE 05W MADISON COUNTY.

7. The claim also received the following issue remark regarding its source: THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM LITTLE CHERRY CREEK, DRY CREEK, AND LITTLE DRY CREEK.

This issue remark was added because the claim includes livestock drinking from three distinct creeks: Dry Creek, Little Cherry Creek, and Little Dry Creek. The conveyance system informational remark currently on the claim describes that Dry Creek water is diverted into Little Cherry Creek and Little Dry Creek, explaining why the claim for a single source includes livestock drinking from the three separate creeks. Mr. Patritti's August 2, 2021, Response indicates that the informational remark accurately describes conveyance of Dry Creek water. Therefore, the Preliminary Decree accurately identified this as a claim for solely Dry Creek water.

8. Finally, the claim received the following issue remark concerning its ownership:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 12/03/2007, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY LOMBARDI RANCHES INC, 55 HANSON LN, WHITEHALL, MT, 59759-5000.

The only portion of the claim's place of use identified by the Montana Cadastral as owned by Lombardi Ranches is place of use ID No. 8 in the NE of Section 21, T1S, R6W. The Statement of Claim for this water right was originally filed by Holt and Baker

Ranches on December 2, 1981, and did not include the NE of Section 21. The claim file does not indicate why the NE of Section 21 was added to this claim, but it appears to have been added during the DNRC's verification process prior to issuance of the Basin 40E Preliminary Decree. At the April 13, 2021, Status Conference in this matter, John Patritti informed the Court that the Claimant has never owned the NE of Section 21; the Claimant agreed. It appears this place of use was mistakenly added by the DNRC and should be removed.

#### PRINCIPLES 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, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. The Water Court is not bound by settlement agreements, and all such agreements are subject to review and approval by the Court. Rule 17(a), W.R.Adj.R.

3. A statement of claim for an existing water right or an amended claim of an existing right constitutes *prima facie* proof of its content until the issuance of a final decree. § 85-2-227(1), MCA. Anyone seeking to modify a claim or amended claim has the burden of showing by a preponderance of the evidence that the elements of the claim are incorrect. Preponderance of the evidence is a relatively modest standard that requires a party to prove the existence of a particular fact is more probable than not. *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 248 P.3d 628. This is the applicable burden of proof for every assertion that a claim is incorrect, regardless of whether the party seeking the modification is an adverse party or the claimant objecting to its own claim. Rule 19 W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

4. In addition to the specific water right elements that must be included in a final decree, the Water Court also may include "any other information necessary to fully define the nature and extent of the right." § 85-2-234(6)(i), MCA. This information typically takes the form of an "information remark." The purpose of an information remark is to "provide facts regarding prior use of a right that are critical to its

administration in accord with historical use." Order Adopting Master's Report in Part, Water Court Case 76G-A8, ¶10 (Oct. 29, 2014).

5. 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. § 85-2-248(3), MCA.

6. The Water Court may correct a clerical mistake or a mistake arising from oversight or omission where one is found in a part of the record. Rule 60(a), M.R.Civ.P.

#### CONCLUSIONS OF LAW

1. The Stipulation's proposed modification to the place of use for this claim is supported by a preponderance of the evidence and overcomes the *prima facie* status of the claim. Place of use ID No. 3 should be modified as described in Finding of Fact 2, above.

2. The addition of Holt Ditch to points of diversion ID Nos. 3 and 9 and to the informational remark is supported by a preponderance of the evidence and resolves the ditch name issue remark. Holt Ditch should be added to the claim as described in Finding of Fact 5 above.

3. The changes to the conveyance system information remark on the claim described in Finding of Fact No. 6 are supported by a preponderance of the evidence and the informational remark aids in its administration in accordance with historical use. It should be modified as described in Finding of Fact No. 6 above.

4. The source and point of diversion issue remarks fail to overcome the *prima facie* status of the claim and can be removed.

5. Place of use ID No. 8 was mistakenly added to the claim. The Claimants have agreed to remove place of use ID No. 8, and the removal is supported by a preponderance of the evidence. This resolves the ownership issue remark on the claim.

6. Based on information before the Court, implementation of the above-described modifications and removal of the issue remarks resolves the Claimant and United States' objections in this matter, and John Patritti's Notice of Intent to Appear.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify claim 41G 206747-00 as described above and the issue remarks from the claim.

A copy of the Stipulation and a post-decree abstract of the water right claim reflecting the recommended changes are attached to this Report.

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Eyvind Ostrem  
Water Master

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John R. Patritti  
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**WATER COURT**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**JEFFERSON RIVER**  
**BASIN 41G**

**Water Right Number:** **41G 206747-00** STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HOLT & BAKER RANCHES  
70 FRANICH LN  
WHITEHALL, MT 59759

**Priority Date:** NOVEMBER 15, 1870

**Type of Historical Right:** FILED

**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:** DRY CREEK  
**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		S2	30	1S	5W	MADISON
	Period of Diversion:	MAY 1 TO NOVEMBER 15				
	Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
2		NW	32	1S	5W	MADISON
	Period of Diversion:	MAY 1 TO NOVEMBER 15				
	Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
3		SWSWSW	8	1S	6W	SILVER BOW
	Period of Diversion:	MAY 1 TO NOVEMBER 15				
	Diversion Means:	DITCH				
	Ditch Name:	HOLT DITCH				
4		E2SW	8	1S	6W	SILVER BOW
	Period of Diversion:	MAY 1 TO NOVEMBER 15				
	Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
5		SE	8	1S	6W	SILVER BOW
	Period of Diversion:	MAY 1 TO NOVEMBER 15				
	Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				

6 S2 13 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
7 NE 15 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
8 E2NENW 15 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
9 SWNESW 16 1S 6W SILVER BOW  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** DITCH  
**Ditch Name:** HOLT DITCH  
10 NE 21 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
11 N2 22 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
12 N2S2 22 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
13 N2 23 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
14 N2S2 23 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
15 NE 25 1S 6W MADISON  
**Period of Diversion:** MAY 1 TO NOVEMBER 15  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
**Period of Use:** MAY 1 TO NOVEMBER 15

**\*Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			S2	30	1S	5W	MADISON
2			NW	32	1S	5W	MADISON
3			E2SW	8	1S	6W	SILVER BOW
4			SE	8	1S	6W	SILVER BOW
5			S2	13	1S	6W	MADISON
6			NE	15	1S	6W	MADISON
7			E2NENW	15	1S	6W	MADISON
8			N2	22	1S	6W	MADISON
9			N2S2	22	1S	6W	MADISON

10	N2	23	1S	6W	MADISON
11	N2S2	23	1S	6W	MADISON
12	NE	25	1S	6W	MADISON

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**Remarks:**

DRY CREEK WATER IS DIVERTED BY HOLT DITCH TO LITTLE CHERRY CREEK WHICH CONVEYS IT TO PLACES OF USE IN SEC. 15, 22, AND 23 TWP 01S RGE 06W SILVER BOW AND MADISON COUNTIES, AND TO A SECONDARY DITCH DIVERSION AT SWNESW SEC. 16 TWP 01S RGE 06W SILVER BOW COUNTY INTO DRY CREEK, ALSO KNOWN AS LITTLE DRY CREEK, WHICH CONVEYS IT TO PLACES OF USE IN SEC. 21, 22, 23, AND 25 TWP 01S RGE 06W MADISON COUNTY AND SEC. 30 AND 32 TWP 01S RGE 05W MADISON COUNTY.

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District of Montana

41G-0190-R-2021

JEAN E. WILLIAMS, Acting Assistant Attorney General  
Environment & Natural Resources Division

July 6, 2021

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Montana Water Court

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Department of Agriculture - Forest Service

**IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)**

\*\*\*\*\*

CLAIMANT: Holt & Baker Ranches

**CASE 41G-0190-R-2021**  
41G 206747-00

OBJECTOR: Holt & Baker Ranches; United States of America  
(Department of Agriculture - Forest Service)

NOTICE OF INTENT TO APPEAR: John R. Patritti

**STIPULATION TO RESOLVE OBJECTIONS**

This Stipulation, entered into by the United States of America, Department of Agriculture – Forest Service (“United States”), Claimant Holt & Baker Ranches (“Claimant”), and Notice of Intent to Appear Party John R. Patritti (“NOIA”), is for the purpose of resolving the United States’ objection to Water Right Claim No. 41G 206747-00.

**RECITALS**

A. Pursuant to Mont. Code Ann. § 85-2-221, Claimant timely filed a Statement of Claim for 41G 206747-00 with the Department of Natural Resources and Conservation.

B. Pursuant to Mont. Code Ann. § 85-2-233, the United States and Claimant timely filed Notices of Objection to 41G 206747-00 as it appeared on the Preliminary Decree for Basin 41G.

C. Water Right Claim No. 41G 206747-00 claims a filed stockwater right on Dry Creek. Point of Diversion ID No. 3 is shown on the Preliminary Decree as SESESE, Section 7, Township 1S, Range 6W. The Point of Diversion, which occurs on private land, is more accurately described as SWSWSW Section 8 of that township.

D. Claimant filed an objection relating to the correct name of the relevant ditch. That ditch was incorrectly listed as Hoyt Ditch, rather than Holt Ditch. That objection is not resolved by this stipulation.

E. In the interest of resolving this case without the need for further litigation, Claimant, NOIA, and the United States stipulate and agree to the following:

#### AGREEMENT

1. Point of Diversion ID No. 3 should be amended as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
3		<u>SWSWSW</u>	<u>8</u>	1S	6W	SILVER BOW
		<u>SESESE</u>	<u>7</u>			

2. The proposed abstract attached as **Exhibit 1** accurately reflects the stipulated amendment to the claim.

3. Upon entry of a ruling and final order in this case reflecting the amendments specified above, the United States' objections to 41G 206747-00 shall be deemed resolved, provided that such order(s) do not expand or change any other substantive elements of the claim.

4. This Stipulation is the compromise of disputed water claims and is not to be construed as an admission against the interests of any party.

5. The parties hereto represent and affirm that the signatories to this Stipulation are legally authorized to bind the party to this matter.

6. The terms of this Stipulation are binding on the parties, their successors, heirs, and assignees. Nothing in this Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.

7. Each party agrees to bear its own costs and attorney fees arising from the negotiation and execution of the Stipulation and in proceedings before the Montana Water Court regarding this case.

8. Each undersigned party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, whatsoever.

9. This Stipulation may be executed by the parties in counterparts, each of which when executed and filed with the Montana Water Court shall be an original, but all of which together shall constitute one instrument.

10. The parties agree that this document (¶¶ 1-10) embodies the entire Stipulation of the parties.

IT IS SO AGREED AND STIPULATED on the date last entered below:

LEIF M. JOHNSON  
Acting U.S. Attorney, District of Montana

JEAN E. WILLIAMS  
Acting Assistant Attorney General

Dated: July 6, 2021

*Mark J. Widerschein*  
\_\_\_\_\_  
MARK J. WIDERSCHEIN, Trial Attorney  
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Natural Resources Section  
Environment & Natural Resources Division

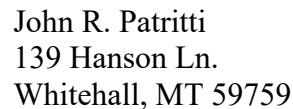
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ATTORNEY FOR UNITED STATES OF AMERICA,  
Department of Agriculture – Forest Service

Dated: July 6, 2021

  
Melissa Baker  
Holt & Baker Ranches  
70 Franich Ln.  
Whitehall, MT 59759

Dated: \_\_\_\_\_, 2021

  
John R. Patritti  
139 Hanson Ln.  
Whitehall, MT 59759

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Electronic Service: MontanaBasins.ENRD@usdoj.gov

ATTORNEY FOR UNITED STATES OF AMERICA,  
Department of Agriculture – Forest Service

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Melissa Baker  
Holt & Baker Ranches  
70 Franich Ln.  
Whitehall, MT 59759



Dated: 7/02/2021, 2021

\_\_\_\_\_  
John R. Patritti  
139 Hanson Ln.  
Whitehall, MT 59759

## **Exhibit 1**

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601  
**GENERAL ABSTRACT**

**Water Right Number:** 41G 206747-00 STATEMENT OF CLAIM  
**Version:** 2 -- REEXAMINED

**Version Status:** ACTIVE

**Owners:** HOLT & BAKER RANCHES  
70 FRANICH LN  
WHITEHALL, MT 59759

**Priority Date:** NOVEMBER 15, 1870

**Enforceable Priority Date:** NOVEMBER 15, 1870

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Maximum 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.

**Maximum 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:** DRY CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2	30	1S	5W	MADISON

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2 NW 32 1S 5W MADISON

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3 ~~SWSWSW SESESE~~ 8 7 1S 6W SILVER BOW

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** DITCH

4 E2SW 8 1S 6W SILVER BOW

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

5 SE 8 1S 6W SILVER BOW

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

6 S2 13 1S 6W MADISON

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

7 NE 15 1S 6W MADISON

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

8 E2NENW 15 1S 6W MADISON

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

9 SWNESW 16 1S 6W SILVER BOW

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** DITCH

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
10		NE	21	1S	6W	MADISON

**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

11		N2	22	1S	6W	MADISON
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**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

12		N2S2	22	1S	6W	MADISON
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**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

13		N2	23	1S	6W	MADISON
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**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

14		N2S2	23	1S	6W	MADISON
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**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

15		NE	25	1S	6W	MADISON
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**Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** MAY 1 to NOVEMBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2	30	1S	5W	MADISON
2			NW	32	1S	5W	MADISON
3			E2SW	8	1S	6W	SILVER BOW
4			SE	8	1S	6W	SILVER BOW
5			S2	13	1S	6W	MADISON
6			NE	15	1S	6W	MADISON
7			E2NENW	15	1S	6W	MADISON
8			NE	21	1S	6W	MADISON
9			N2	22	1S	6W	MADISON
10			N2S2	22	1S	6W	MADISON
11			N2	23	1S	6W	MADISON
12			N2S2	23	1S	6W	MADISON
13			NE	25	1S	6W	MADISON

<b>Geocodes/Valid:</b>	01-0889-08-1-01-01-0000 - Y	01-0889-13-1-01-01-0000 - Y
	01-0889-15-1-01-01-0000 - Y	25-0888-13-4-01-01-0000 - Y
	25-0888-21-1-01-01-0000 - Y	25-0888-22-1-01-01-0000 - Y
	25-0888-23-1-01-01-0000 - Y	25-0888-25-1-01-01-0000 - Y
	25-0891-30-4-01-01-0000 - Y	25-0891-32-2-01-01-0000 - Y

**Remarks:**

DRY CREEK WATER IS DIVERTED BY A DITCH TO LITTLE CHERRY CREEK WHICH CONVEYS IT TO PLACES OF USE IN SEC. 17, 16, 15, 22, AND 23 TWP 01S RGE 06W SIVER BOW AND MADISON COUNTIES, AND TO A SECONDARY DITCH DIVERSION AT SWNESW SEC. 16 TWP 01S RGE 06W SILVER BOW COUNTY INTO DRY CREEK, ALSO KNOWN AS LITTLE DRY CREEK, WHICH CONVEYS IT TO PLACES OF USE IN SEC. 21, 22, 23, AND 25 TWP 01S RGE 06W MADISON COUNTY AND SEC. 30 AND 32 TWP 01S RGE 05W MADISON COUNTY.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

IT APPEARS HOYT DITCH SHOULD BE PART OF THIS CLAIM. IT DIVERTS FROM DRY CREEK IN THE SWSWSW SEC 8, T1S, R6W AND FLOWS THROUGH LITTLE CHERRY CREEK IN THE SW OF SECTION 16 AND INTO LITTLE DRY CREEK IN THE NW OF SEC 21.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 12/03/2007, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY LOMBARDI RANCHES INC, 55 HANSON LN, WHITEHALL, MT, 59759-5000.

THE POINTS OF DIVERSION APPEAR TO BE INCORRECT. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

**Remarks:**

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM LITTLE CHERRY CREEK, DRY CREEK, AND LITTLE DRY CREEK.

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)

\*\*\*\*\*

CLAIMANT: Holt & Baker Ranches

CASE 41G-0190-R-2021

41G 206747-00

OBJECTOR: Holt & Baker Ranches; United States of America  
(Department of Agriculture Forest Service)

NOTICE OF INTENT TO APPEAR: John R. Patritti

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2021, I sent a true and correct copy of the foregoing document to the following:

**Service via USPS Mail:**

Melissa Baker  
Holt & Baker Ranches  
70 Franich Ln  
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*/s/ Jessica S. Pannett*

Jessica. S. Pannett, Law Clerk