

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

CLAIMANT: Hayfield Creek Ranch LLC

CASE 41I-1007-R-2024
41I 132656-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 above-captioned claim appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received an

issue remark. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

The claim was consolidated into Case 41I-1007-R-2024 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remark.

FINDINGS OF FACT

1. Claim 41I 132656-00 received the following substantive issue remarks:
POINT OF DIVERSION NO. 1 APPEARS INCORRECT. THE POINT OF DIVERSION NO. 1 APPEARS TO BE SESW SEC 6 TWP 4N RGE 7E GALLATIN COUNTY.

2. On September 6, 2024, the Court consolidated claim 41I 132625-00-00 into case 41I-1007-R-2024 and set a filing deadline for the Claimant to respond if they did not agree with the proposed modification to the point of diversion. Nothing was filed by the ordered deadline. The Order Setting Filing Deadline included the following language regarding the above-listed issue remark:

*ORDERED that the claimant review this order and, if necessary, file information or evidence disputing the proposed modification to point of diversion No. 1 for claim 41I 132656-00 by **Wednesday, October 16, 2024**. If nothing is filed by the deadline, this Water Master will conclude that the claimant agrees with the proposed modification to the point of diversion for claim 41I 132656-00, point of diversion No. 1 will be modified from the SWSW of Sec 6, Twp 4N, Rge 7E in Gallatin County to SESW of Sec 6, Twp 4N, Rge 7E in Gallatin County, and the issue remark will be removed from the claim.*

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. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

CONCLUSION OF LAW

1. The information in the record resolves issue remark appearing on claim 41I 132656-00. Because nothing was filed at the filing deadline by the Claimant, and the DNRC provided sufficient information supporting the issue remark, the issue remark overcomes the prima facie status afforded the Statement of Claim for claim 41I 132656-00, a preponderance of the evidence shows that the point of diversion should be modified as described in Finding of Fact No. 2, and the issue remark should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify point of diversion No. 1 for claim 41I 132656-00 from SWSW in Sec 6, Twp 4N, Rge 7E in Gallatin County to SESW in Sec 6, Twp 4N, Rge 7E in Gallatin County and remove the issue remark from the claim.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Hayfield Creek Ranch LLC
Attn: David S. Fallis, Manager
18600 Sorrel Springs Ln
Frenchtown, MT 59834

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

Water Right Number: 41I 132656-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HAYFIELD CREEK RANCH LLC
ATTN: DAVID S. FALLIS, MANAGER
18600 SORREL SPRINGS LN
FRENCHTOWN, MT 59834-9500

Priority Date: MAY 8, 1942

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:** COAL GULCH

Source Type: SURFACE WATER
ALSO KNOWN AS POLE GULCH

***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		SESW	6	4N	7E	GALLATIN
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NE	7	4N	7E	GALLATIN
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NESE	8	4N	7E	GALLATIN
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		S2NE	8	4N	7E	GALLATIN
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		NENW	8	4N	7E	GALLATIN
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
Period of Use:	APRIL 1 TO NOVEMBER 30					

***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			SWSW	6	4N	7E	GALLATIN
2			NE	7	4N	7E	GALLATIN
3			NESE	8	4N	7E	GALLATIN
4			S2NE	8	4N	7E	GALLATIN
5			NENW	8	4N	7E	GALLATIN