

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

\*\*\*\*\*

CLAIMANTS: Namaste LLC; Sally Jo Ryan

**CASE 41I-1026-R-2024**  
41I 143562-00

**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-1026-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 143562-00 received the following substantive issue remark:

PLACE OF USE SECTIONS NUMBERS APPEAR TO BE REVERSED FROM THE POINT OF DIVERSIONS SECTION NUMBERS. POINTS OF DIVERSIONS APPEAR TO BE CORRECT.

2. On September 6, 2024, the Court consolidated claim 41I 143562-00-00 into case 41I-1026-R-2024 and set a filing deadline for the Claimants 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 claimants review this order and, *if necessary*, file information or evidence disputing the proposed modification to the places of use for claim 41I 143562-00 by **Wednesday, October 16, 2024**. *If nothing is filed by the deadline, this Water Master will conclude that the claimants agree with the proposed modification to the places of use for claim 41I 143562-00, the places of use will be modified to reflect the same order as the points of diversion, 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 143562-00. Because nothing was filed at the filing deadline by the Claimants, 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 143562-00, a preponderance of the evidence shows that the place of use 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 the places of use for claim 41I 143562-00 to reflect the order of the points of diversion 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:**

Namaste LLC  
15 Longfellow Rd  
Wellesley Hills, MA 02481

Sally Jo Ryan  
4311 50<sup>th</sup> Ave NE  
Seattle, WA 98105

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

**Water Right Number:** 41I 143562-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SALLY JO RYAN  
4311 50TH AVE NE  
SEATTLE, WA 98105

NAMASTE LLC  
15 LONGFELLOW RD  
WELLESLEY HILLS, MA 02481-5220

**Priority Date:** APRIL 15, 1892

**Type of Historical Right:** DECREED

**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:** UNNAMED TRIBUTARY OF SIXTEENMILE 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		W2	13	4N	4E	GALLATIN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NENE	14	4N	4E	GALLATIN
---	--	------	----	----	----	----------

**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			W2	13	4N	4E	GALLATIN
2			NENE	14	4N	4E	GALLATIN

**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.

143548-00

143562-00