

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANT: B&H Ranch Company

CASE 41S-0641-R-2024
41S 30111658

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
FINDINGS OF FACT

1. B&H Ranch Company is the record owner of claim 41S 30111658.
2. B&H Ranch Company (B&H) was ordered to meet with a DNRC employee

to address the following unresolved issue remarks decreed on claim 41S 30111658:

- THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.
- THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1 AND 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED.

3. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating he discussed the issue remarks with B&H’s Jim Peterson. (Doc.* 5.00). Mr. Ahlgren indicated he reviewed the scanned claim file and a map submitted by Mr. Peterson to make his recommendations; he attached a map and proposed abstract to the Memorandum.

Mr. Ahlgren recommended the point of diversion and place of use for claim 41S 30111658 be modified to the following legal land descriptions, resolving the DNRC issue remarks:

<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		SWSWNW	W2SWNW	22	12N	15E	JUDITH BASIN
2		SESWNW	E2SENE	22 24	12N	15E	JUDITH BASIN

4. A deadline was set for Claimant B&H Ranch Company to agree or disagree with the recommended point of diversion and place of use legal land description modifications. The Order Setting Filing Deadline indicated that if nothing were filed by the deadline, this Water Master would conclude that claim 41S 30111658 should be modified as shown in Finding of Fact No. 3. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

* “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. Claim 41S 30111658 was also decreed with a remark indicating it was not included in the 1984 Decree in Basin 41S. As no objections were filed, no further proceedings are needed.

RECOMMENDATIONS

1. Claim 41S 30111658 should be modified as follows:

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	SWSWNW	W2SWNW	22	12N	15E	JUDITH BASIN	
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: LIVESTOCK DIRECT FROM SOURCE							
2	SESWNW	E2SENE	22	24	12N	15E	JUDITH BASIN
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: LIVESTOCK DIRECT FROM SOURCE							

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		SWSWNW	W2SWNW	22	12N	15E	JUDITH BASIN	
2		SESWNW	E2SENE	22	24	12N	15E	JUDITH BASIN

2. The issue remarks should be removed from claim 41S 30111658.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

John E. Bloomquist
Betsy R. Story
PARSONS BEHLE & LATIMER
201 E. Broadway St.
Helena, MT 59602
Telephone: (406) 410-5050
ecf@parsonsbehle.com
bstory@parsonsbehle.com
jbloomquist@parsonsbehle.com

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 30111658 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: B & H RANCH COMPANY
501 PETERSON RANCH LANE
BUFFALO, MT 59418-8134

Priority Date: MAY 24, 1890

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:** SPRING, UNNAMED TRIBUTARY OF MUD 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		SWSWNW	22	12N	15E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SESWNW	22	12N	15E	JUDITH BASIN
---	--	--------	----	-----	-----	--------------

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			SWSWNW	22	12N	15E	JUDITH BASIN
2			SESWNW	22	12N	15E	JUDITH BASIN