

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
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

CLAIMANTS: Anna Schneider; Michael Schneider

OBJECTORS: Anna Schneider; Michael Schneider

CASE 41I-0102-R-2023
41I 6065-00

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

Claim 41I 6065-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Anna and

Michael Schneider. 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 Schneiders also self-objected to the place of use.

FINDINGS OF FACT

1. Claim 41I 6065-00 appeared in the Basin 41I Preliminary Decree as a domestic claim for a spring in the NWSWSW of Section 7, T9N, R3W, Lewis and Clark County.

2. The claim was decreed with a flow rate of 13.30 gallons per minute (GPM) and a volume of 10.70 acre-feet (AC-FT).

3. The claim received the following issue remark:

VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 11.9 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.

4. On February 27, 2024, Claimants filed information addressing the volume issue remark. (Doc.¹ 2.00).

5. The Statement of Claim for claim 41I 6065-00 originally claimed 133.00 GPM, however the flow rate was entered into the DNRC database as 13.30 GPM.

6. When calculated using the flow rate of 133.00 GPM, the volume does not exceed the DNRC’s feasibility standards.

7. Claim 41I 6065-00 appeared in the Basin 41I Preliminary Decree with the following place of use:

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	4.13		NWSWSW	7	9N	3W	LEWIS AND CLARK
Total:	4.13						

8. The Statement of Claim listed the place of use as:

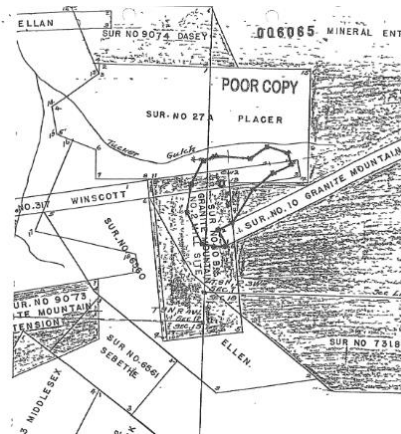
7 Place of use and acres irrigated County LEWIS AND CLARK
4.13* acres, NW 1/4 SW 1/4 SW 1/4, Section 7, T 9 N, R 3 W

9. Claimants self-objected to claim 41I 6065-00 to correct the place of use by including portions of the “in and adjoining” the NWSWSW of Section 7, T9N, R3W. As

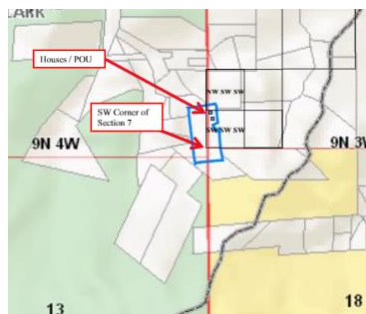
¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

shown by the maps attached to the Statement of Claim and the current maps filed by Claimants, the place of use includes the SWSWSW of Section 7, T9N, R3W:

Map attached to Statement of Claim



Map filed by Claimants (Doc. 2.00)



PRINCIPLES OF LAW

1. 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.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, 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).
5. 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.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant's objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

9. The Court may correct a clerical mistake found in a judgment, order, or other part of the record on motion or on its own, with or without notice. Rule 60(a), M.R.Civ.P.

CONCLUSIONS OF LAW

1. The volume issue remark does not overcome the prima facie status of claim 41I 6065-00. Based on the information in the claim file, the flow rate was originally claimed as 133.00 GPM. The 13.30 GPM flow rate that appeared in the Basin 41I Preliminary Decree was a clerical error. Therefore, based on Rule 60(a), M.R.Civ.P., the flow rate should be corrected to 133.00 GPM.

2. Claimants' self-objection overcomes the prima facie status of claim 41I 6065-00. Claimants showed by a preponderance of the evidence that the place of use includes the SWSWSW of Section 7, T9N, R3W.

RECOMMENDATIONS

1. The flow rate should be corrected to 133.00 GPM.
2. The place of use should be modified to the W2SWSW of Section 7, T9N, R3W.
2. The issue remark should be removed from claim 41I 6065-00.

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 Electronic Mail

William P. Driscoll
Ryan P. McLane
Franz & Driscoll, PLLP
P.O. Box 1155
Helena, MT 59624-1155
(406) 442-0005
wpd@franzdriscoll.com
ryan@franzdriscoll.com
office@franzdriscoll.com

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

Water Right Number: 411 6065-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ANNA SCHNEIDER
1965 TUCKER GULCH RD
HELENA, MT 59601-6334

MICHAEL SCHNEIDER
1965 TUCKER GULCH RD
HELENA, MT 59601-6334

Priority Date: APRIL 1, 1945

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 133.00 GPM

Volume: 10.70 AC-FT

Households: 2

Maximum Acres: 4.13

Source Name: SPRING, UNNAMED TRIBUTARY OF TUCKER GULCH

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		NWSWSW	7	9N	3W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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	4.13		W2SWSW	7	9N	3W	LEWIS AND CLARK
Total:	4.13						