

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

CLAIMANTS: Radley Ranch Legacy LLC; Charles P. Hahn;
Hahn Ranch

CASE 41I-0032-R-2023
41I 46198-00
41I 30131046

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

The above-captioned claims appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claims received issue

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

FINDINGS OF FACT

1. Claim 41I 46198-00 is owned by Radley Ranch Legacy LLC. The claim was decreed as a right for livestock drinking directly from White Horse Creek as follows:

| <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 | | | SENE | 6 | 7N | 1E | BROADWATER |
| 2 | | | SWNE | 6 | 7N | 1E | BROADWATER |
| 3 | | | SENE | 6 | 7N | 1E | BROADWATER |
| 4 | | | SWNW | 6 | 7N | 1E | BROADWATER |

2. Claim 41I 30131046 is co-owned by Charles Hahn and Hahn Ranch. The claim was decreed as a claim for livestock drinking directly from White Horse Creek as follows:

| <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 | | | S2NE | 5 | 7N | 1E | BROADWATER |
| 2 | | | N2 | 6 | 7N | 1E | BROADWATER |

3. The claims received the following issue remarks:

41I 46198-00

THIS WATER RIGHTS POD/ POU APPEARS TO BE DUPLICATED BY POD/POU NO. 2 OF WATER RIGHTS CLAIM NO. 41I 30131046

41I 30131046

THIS CLAIMS POD #2 APPEARS TO BE DUPLICATED BY CLAIM NO. 41I 46198-00. IT APPEARS ONE WATER RIGHT IS INVOLVED.

4. At a status conference in this matter, the parties clarified that Hahn Ranch owns the S2NE of Section 6, and Radley Ranch owns the S2NW of Section 6.

Additionally, Charles Hahn stated that the section numbers on claim 41I 30131046 and the points of diversion/places of use are in the S2NE of Section 6 and the N2 of Section

5.

5. Claim 41I 30131046 also received the following notice-type issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41I DECREE ISSUED 03/08/1995.

6. This remark served its notice purpose and should be removed from the claim.

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.

CONCLUSIONS OF LAW

1. The point of diversion/place of use issue remark overcomes the prima facie status of claim 41I 46198-00. The points of diversion and places of use in the NE of Section 6, T7N, R1E, Broadwater County are owned by Hahn Ranch and should be removed from the claim.

2. The point of diversion/place of use issue remark overcomes the prima facie status of claim 41I 30131046. The section numbers that were decreed on the points of diversion and places of use should be switched so that the points of diversion and places of use appear as the S2NE of Section 6, T7N, R1E, Broadwater County and the N2 of Section 5, T7N, R1E, Broadwater County.

3. The notice-type issue remark served its notice purpose.

RECOMMENDATIONS

1. The points of diversion and places of use in the NE of Section 6, T7N, R1E, Broadwater County should be removed from claim 41I 46198-00.
 2. The section numbers on claim 41I 30131046 should be switched so that the points of diversion and places of use appear as the S2NE of Section 6, T7N, R1E, Broadwater County, and the N2 of Section 5, T7N, R1E, Broadwater County.
 3. The issue remarks should be removed from the claim abstracts.
- A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Charles P Hahn
Hahn Ranch
7996 US HWY 287
Townsend, MT 59644

Radley Ranch Legacy LLC
% Tyson Oconnell
545 Blaine St
Missoula, MT 59801
406-531-4745 C
Toconn87@yahoo.com

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

Water Right Number: 41I 46198-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RADLEY RANCH LEGACY LLC
% TYSON OCONNELL
545 BLAINE ST
MISSOULA, MT 59801-4118

Priority Date: NOVEMBER 23, 1866

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: WHITE HORSE 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 | | SENW | 6 | 7N | 1E | BROADWATER |

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

| | | | | | | |
|---|--|------|---|----|----|------------|
| 2 | | SWNW | 6 | 7N | 1E | BROADWATER |
|---|--|------|---|----|----|------------|

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 1 TO NOVEMBER 1

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 | | | SENW | 6 | 7N | 1E | BROADWATER |
| 2 | | | SWNW | 6 | 7N | 1E | BROADWATER |

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

Water Right Number: 41I 30131046 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: CHARLES P HAHN
7996 US HWY 287
TOWNSEND, MT 59644-9732

HAHN RANCH
7996 US HIGHWAY 287
TOWNSEND, MT 59644-2107

Priority Date: MARCH 8, 1898

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: WHITE HORSE 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 | | S2NE | 6 | 7N | 1E | BROADWATER |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

| | | | | | | |
|---|--|----|---|----|----|------------|
| 2 | | N2 | 5 | 7N | 1E | BROADWATER |
|---|--|----|---|----|----|------------|

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 | | | S2NE | 6 | 7N | 1E | BROADWATER |
| 2 | | | N2 | 5 | 7N | 1E | BROADWATER |