

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

CLAIMANT: Phillip I. Kolar

CASE 41S-0705-R-2024
41S 101978-00

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

FINDINGS OF FACT

1. Phillip I. Kolar is the record owner of claim 41S 101978-00.
2. The claimed, and decreed, point of diversion and place of use for claim 41S 101978-00 is:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENW	11	16N	18E	FERGUS

3. On May 4, 1989, then-record-owner David Shipman, filed an amendment to claim 41S 101978-00. The amendment indicated the historical point of diversion and place of use for the claim is in the SWSWNE of Section 11, Township 16 North, Range 18 East, Fergus County. No evidence was attached to the amendment supporting the historical beneficial use of the claim as proposed in the amendment.

As the amendment was filed several years after the Temporary Preliminary Decree objection period, and before the Preliminary Decree, the Water Master added the following issue remark to the claim to ensure that the amendment would be addressed during the Preliminary Decree:

ON 05/04/1989 DAVID SHIPMAN FILED A LATE OBJECTION TO THE POINT OF DIVERSION AND PLACE OF USE. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

4. An Order Setting Filing Deadline was issued to determine if late Objector David Shipman wished to pursue the Amendment to claim 41S 101978-00, the Order also indicated that if the Amendment was pursued, evidence supporting it should be filed. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude David Shipman does not intend to pursue the amendment and this Water Master will recommend dismissal of the amendment in the forthcoming Master's Report. Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 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.

In the present case, nothing has been filed by late objector David Shipman to overcome the prima facie Statement of Claim.

RECOMMENDATIONS

1. The May 4, 1989 amendment filed by David Shipman, taken as a late objection, should be dismissed.
2. The issue remark should be removed from the claim.
A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

David Shipman
35732 MT Highway 81
Lewistown, MT 59457

Phillip I. Kolar
522 Kattle Kompany Ln
Lewistown, MT 59457-8049
Late Objector

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

Water Right Number: 41S 101978-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: PHILLIP I KOLAR
522 KATTLE KOMPANY LN
LEWISTOWN, MT 59457-8049

Priority Date: JANUARY 1, 1950

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 SCALP CREEK

Source Type: GROUNDWATER

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		SESENW	11	16N	18E	FERGUS

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			SESENW	11	16N	18E	FERGUS

Remarks:

AUTHORIZATION TO CHANGE PLACE OF USE ISSUED 08/07/1989. COMPLETED 09/08/1989.