

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: Charles P. Hahn; Hahn Ranch

OBJECTORS: United States of America (Department of  
Agriculture Forest Service)

**CASE 41I-0111-R-2024**  
41I 30131040  
41I 30131045

**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 are owned by

Charles Hahn and Hahn Ranch. The claims received objections from the United States Forest Service (United States). The claims also 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

#### **41I 30131040**

1. Claim 41I 30131040 appeared in the Basin 41I Preliminary Decree as a claim for stock drinking directly from a spring in the NWNESW of Section 30, T8N, R1W, Broadwater County.

2. The United States objected to claim 41I 30131040, stating:

Range number for diversion/place of use should be **1E** based on claimant map and DNRC exam map. POD/POU should be NWNESW Section 30 T8N R1E.

3. On April 11, 2024, the parties filed a stipulation. (Doc.<sup>1</sup> 3).

4. The stipulation requests that the range of the legal land description for the point of diversion and place of use be corrected from R1W to R1E.

5. The stipulation explains the correction as:

C. Claim 41I 30131040 is livestock direct from source right on a spring, unnamed tributary to Kelly Spring Gulch. The claim form identifies the source as Kimber Spring with a Point of Diversion/Place of Use (“POD/POU”) in NWNESW Section 30, Township 8 North, Range 1 East, Broadwater County. This location corresponds to Hahn’s private land and a drainage situated between Kelly Spring Gulch and Kimber Gulch, as shown on the topographic map in the claim examination materials. The POD/POU on the Preliminary Decree incorrectly shows the range number as Range 1 West. This appears to be a clerical error.

#### **41I 30131045**

6. Claim 41I 30131045 appeared in the Basin 41I Preliminary Decree as a stockwater claim from Six Point Coulee Spring. The point of diversion and place of use were decreed as follows:

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

**\*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	1		1	7N	1W	BROADWATER

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			NWNWNW	6	7N	1E	BROADWATER

7. The United States objected to claim 41I 30131045, stating:

The statement of claim does not include documentation to substantiate use on United States Forest Service land at the time of the claimed priority date.

8. The stipulation requests modification of the point of diversion legal land description 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	4	NWNWNW	4	7N	1W	BROADWATER

Period of Diversion: JANUARY 1 TO DECEMBER 31

9. The stipulation explains the modification as:

D. Claim 41I 30131045 is a livestock water right on a developed spring, unnamed tributary of Missouri River, also known as Six Point Coulee Spring. The claim form specifies the spring POD as NWNWNW Section 6, Township 7 North, Range 1 East, Broadwater County ("Section 6"), which is Hahn's private land. The map attached as "Exhibit B" to the claim form also marks the POD within Section 6, immediately east of the section/township line. During claim examination, DNRC modified the POD to Section 1, Township 7 North, Range 1 West ("Section 1"), which is federal land managed by the Forest Service. To justify the change, the DNRC examiner cited the claim map and the topographic map; however, neither map shows a Six Point Coulee Spring located in Section 1. Aerial imagery reviewed by the Forest Service confirmed the existence of springs in NWNWNW Section 6, as claimed.

10. Although the proposed abstract did not modify the range for the point of diversion and place of use, the NWNWNW of Section 6, T7N, R1E is on Hahn's private land whereas the NWNWNW of Section 6, T7N, R1W is on the United States's land.

11. Claim 41I 30131045 also received the following issue remark:

**NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.**

12. Although the claim form for claim 41I 30131045 listed a quantified volume, the flow rate was left blank.

13. Because claim 41I 30131045 is for a developed spring, it should have a quantified flow rate. The DNRC standard flow rate for stockwater claims on developed springs is 35 gallons per minute (GPM).<sup>2</sup>

14. On July 8, 2024, Claimants filed a statement indicating the flow rate for claim 41I 30131045 is consistent with the DNRC guideline.

### **Notice-Type Issue Remark**

15. The claims also received the following notice-type issue remark:

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

16. This remark served its notice purpose.

The issue remarks identify elements modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remarks indicate that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remarks will be removed. None of the claims received objections.

### 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.

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<sup>2</sup> A previous order by the Court contained a clerical error and stated the DNRC standard flow rate is 17 GPM.

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 Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

9. "The flow rate guideline for...developed springs...will be 35 gallons per minute." W.R.C.E.R. 24(b)(1).

### CONCLUSIONS OF LAW

#### **41I 30131040**

1. The objection overcomes the prima facie status of the claim. The parties showed the range was decreed incorrectly due to a clerical error. The historically accurate legal land description of the point of diversion and place of use is the NWNESW of Section 30, T8N, R1E, Broadwater County.

#### **41I 30131045**

2. The objection overcomes the prima facie status of the claim. The parties showed by a preponderance of the evidence that the historically accurate point of diversion is in the NWNWNW of Section 6, T7N, R1E, Broadwater County.

3. The flow rate issue remark overcomes the prima facie status of the claim. The claim should have a quantified flow rate of 35.00 GPM.

#### **Notice-Type Issue Remark**

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

### RECOMMENDATIONS

1. The point of diversion and place of use for claim 41I 30131040 should be corrected to the NWNESW of Section 30, T8N, R1E, Broadwater County.

2. The point of diversion for claim 41I 30131045 should be modified to the NWNWNW of Section 6, T7N, R1E, Broadwater County.

3. The flow rate for claim 41I 30131045 should be modified to 35.00 GPM.
4. 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**

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

**Water Right Number:** 41I 30131040 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:** JUNE 10, 1900

**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 KELLY SPRING 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		NWNE	SW	8N	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			NWNE	SW	8N	1E	BROADWATER

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

**Water Right Number:** 41I 30131045 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:** APRIL 1, 1929

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 35.00 GPM

**\*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 MISSOURI RIVER

**Source Type:** GROUNDWATER

ALSO KNOWN AS SIX POINT COULEE SPRING

**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		NWNWNW	6	7N	1E	BROADWATER

**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			NWNWNW	6	7N	1E	BROADWATER