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FILED
04/28/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-0089-R-2025
Lockman, Melissa
2.00

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

* * * * *

CLAIMANT: Steve W. & Candace Lyman Family Living Trust

CASE 41I-0089-R-2025
41I 30128069

OBJECTOR: NR & EJ Limited Partnership

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 30128069 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by the Steve

W. & Candace M. Lyman Family Living Trust (“Trust”). NR & EJ Limited Partnership objected to the claim.

FINDINGS OF FACT

1. Claim 41I 30128069 appeared in the Basin 41I Preliminary Decree as a claim for stock drinking directly from Lump Gulch and an unnamed tributary of Lump Gulch in the following locations:

*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			N2N2SW	17	8N	4W	JEFFERSON
2			S2SENW	17	8N	4W	JEFFERSON
3			SWSWNE	16	8N	4W	JEFFERSON

2. NR & EJ Limited Partnership objected to the claim, stating:

~~The Place of Use includes property not owned by claimants in Sec. 16, T8N, R4W. It appears that DNRC incorrectly entered Sec. 16 rather than Sec. 17 for a portion of place of use.~~

3. The Statement of Claim for claim 41I 30128069 only listed the N2N2SW of Section 17, T8N, R4W, Jefferson County. During the DNRC’s examination of the claim, the DNRC added the additional points of diversion and places of use based on the map attached to the Statement of Claim. The map only depicts Section 17.

4. On April 17, 2025, the Court held a status conference in this matter. Steve Lyman appeared on behalf of the Trust. John Tietz appeared on behalf of the NR & EJ Limited Partnership. The parties agree that the SWSWNE §16 is a clerical error and should be corrected to the SWSWNE §17.

5. Claim 41I 30128069 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.

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 objection overcomes the prima facie status of claim 41I 30128069. The evidence in the claim file shows the point of diversion and place of use in the SWSWNE should be in §17.

2. The notice-type issue remark served its notice purpose and should be removed from the claim abstract.

RECOMMENDATIONS

1. For claim 41I 30128069, the point of diversion and place of use in the SWSWNE §16 should be corrected to the SWSWNE §17.

2. The notice-type issue remark should be removed from the claim abstract.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

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(*atty NR & EJ Limited Partnership*)

Notice: Service List Updated 4.24.25

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

Water Right Number: 411 30128069 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LYMAN, STEVE W & CANDACE M FAMILY LIVING TRUST
STEVE W & CANDACE M LYMAN TRUSTEES
5690 RAINBOW DR
HELENA, MT 59602-9574

Priority Date: MAY 1, 1970

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:** LUMP GULCH

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF LUMP 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		N2N2SW	17	8N	4W	JEFFERSON

***Source Name:** LUMP GULCH

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		S2SENW	17	8N	4W	JEFFERSON
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***Source Name:** UNNAMED TRIBUTARY OF LUMP GULCH

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		SWSWNE	17	8N	4W	JEFFERSON
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***Source Name:** LUMP GULCH

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			N2N2SW	17	8N	4W	JEFFERSON
2			S2SEnw	17	8N	4W	JEFFERSON
3			SWSWNE	17	8N	4W	JEFFERSON