

Montana Water Court
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FILED
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-0158-R-2025
Lockman, Melissa
4.00

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

* * * * *

CLAIMANTS: Lynn Dupuy Nash; Jeff Nash

OBJECTOR: United States of America Department of
Agriculture Forest Service

CASE 41I-0158-R-2025
41I 34423-00

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 34423-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Lynn Dupuy Nash and Jeff Nash. The United States Department of Agriculture – Forest Service (“United States”) objected to the claim.

FINDINGS OF FACT

1. Claim 41I 34423-00 was decreed as domestic claim that diverts water from Ruby Creek in the SENENW §17 T8N R5W, Lewis and Clark County. The place of use was decreed as 0.25 acres in the E2NENW §17 T8N R5W, Lewis and Clark County. The United States objected to the claim, stating:

The place of use should be refined to match the point of diversion, SENENW section 17 T18N R5W. The statement of claim map depicts use on private lands.

2. On April 24, 2025, the Court held a status conference in this matter. Michelle Ramus appeared on behalf of the United States Department of Agriculture – Forest Service (“United States”). Lynn Dupuy Nash and Jeff Nash did not appear.

3. The E2NENW§17 T8N R5W includes federal land while the SENENW §17 T18N R5W only includes private land.

4. On April 25, 2025, Jeff Nash contact the Court and stated he agreed with the United States’ proposed refinement to the place of use. (Doc.¹ 3.00).

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.

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

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. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSION OF LAW

1. The United States' objection to claim 41I 34423-00 overcomes the prima facie status of the claim. The evidence in the claim file and provided by the United States shows the place of use is in the SENENW §17 T18N R5W.

RECOMMENDATION

1. The place of use for claim 41I 34423-00 should be refined to the SENENW §17 T18N R5W, Lewis and Clark County.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Lynn Dupuy Nash
Jeff Nash
520 Leslie Ave
Helena, MT 59601

SERVICE VIA ELECTRONIC MAIL

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

Water Right Number: 41I 34423-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LYNN DUPUY NASH
520 LESLIE AVE
HELENA, MT 59601-2820

JEFF NASH
520 LESLIE AVE
HELENA, MT 59601-2820

Priority Date: FEBRUARY 10, 1908
Type of Historical Right: USE
Purpose (Use): DOMESTIC
Flow Rate: 30.00 GPM
Volume: 1.50 AC-FT
Households: 2
Maximum Acres: 0.25
Source Name: RUBY 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		SENENW	17	8N	5W	LEWIS AND CLARK
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		DITCH				
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	0.25		SENENW	17	8N	5W	LEWIS AND CLARK
Total:		0.25					