

Montana Water Court
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FILED
08/08/2025
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43P-0307-I-2025
Lambert, Kathryn
4.00

MONTANA WATER COURT
YELLOWSTONE DIVISION
BIGHORN RIVER, BELOW GREYBULL RIVER
BASIN 43P
INTERLOCUTORY DECREE

* * * * *

CLAIMANT: Kenneth R. Hannen

CASE 43P-0307-I-2025
43P 30120311

OBJECTOR: United States, DOI Bureau of Indian Affairs

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, conclusion 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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail 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 United States, DOI Bureau of Indian Affairs objected to this Kenneth R. Hannen claim. This claim appeared in the Interlocutory Decree with the following issue remarks:

A PORTION OF THE PLACE OF USE FOR STOCK CLAIM NO. 30120311 AND STOCK CLAIM NO. 30025193 OVERLAP.

A PORTION OF THE POINT OF DIVERSION FOR STOCK CLAIM NO. 30120311 AND STOCK CLAIM NO. 30025193 OVERLAP.

On February 20, 2024 - prior to issuance of the Interlocutory Decree - Kenneth R. Hannen filed a Verified Motion To Amend And Correct Water Right Claim ["Motion"] to address and resolve the issue remarks. This is a proposed settlement of the existing issues, not a motion to amend filed pursuant to section 85-2-233(6), MCA. The Certificate of Service states that a copy was sent to counsel for the United States, DOI Bureau of Indian Affairs. On July 30, 2025 the parties filed a Stipulation which states that the changes requested in the Motion resolve the objection. The Stipulation is viewable in the Court's FullCourt Enterprise case management system, document number 3.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Interlocutory Decree states that the point of diversion and place of use are:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
4	SE	20	2S	33E	BIG HORN
	NENE	29	2S	33E	BIG HORN
	N2N2SENE	29	2S	33E	BIG HORN

The point of diversion and place of use should be:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
4	SE	20	2S	33E	BIG HORN

2. The stock claim identified in the two issue remarks is also owned by Kenneth R. Hannen and is for the two stretches of the Bighorn River removed from this claim in Finding of Fact 1. The issue remarks are resolved and should be removed.

3. The Interlocutory Decree also includes the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43P DECREE ISSUED 01/28/2016.

This remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The Motion and Stipulation are sufficient to contradict and overcome the prima facie claim and to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Interlocutory Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIGHORN RIVER, BELOW GREYBULL RIVER
BASIN 43P

Water Right Number: 43P 30120311 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KENNETH R HANNEN
1947 US HWY 87 E
BILLINGS, MT 59101-6651

***Priority Date:** DECEMBER 31, 1935

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 STOCKWATERING 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: BIGHORN RIVER

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	4	SE	20	2S	33E	BIG HORN

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		4	SE	20	2S	33E	BIG HORN

Remarks:

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.