

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

CLAIMANT: Berg Family Ranch at Hatfield Mountain LLC

OBJECTOR: Berg Family Ranch at Hatfield Mountain LLC; United States of America (Bureau of Reclamation)

CASE 41I-1005-R-2024

41I 132666-00

41I 132667-00

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

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 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. Claims 41K 132666-00 and 41I 132667-00 also received an objection from the United States Bureau of Land Management (“BOR”).

The above-captioned claims were consolidated into Case 41I-1005-R-2024 to resolve the objections and issue remarks.

FINDINGS OF FACT

1. Claim 41I 132666-00 received the following substantive issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

USDA AERIAL PHOTOGRAPH NO(S). 179-193, DATED 09/14/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

Claim 41I 132667-00 received the following substantive issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

USDA AERIAL PHOTOGRAPH NO(S). 179-193, DATED 09/14/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. On September 5, 2024, the Court consolidated the above-captioned claims and set a filing deadline for the parties to file settlement documents resolving the objections and issue remarks.

3. On November 21, 2024, claimant Berg Family Ranch a Hatfield Mountain, LLC filed a *Notice of Filing Amendments* (Doc. 5.00)¹ The *Notice* proposes the following modifications to resolve the objections and the issue remarks appearing on each claim:

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

Purpose: **STOCKWATER**

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.**

Maximum Acres: — 42.00

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	14	4N	6E	GALLATIN
		Period of Diversion: JUNE 15 TO DECEMBER 31				
		Means of Diversion: LIVESTOCK DIRECT FROM SOURCE				
2		S2NESW	14	4N	6E	GALLATIN
		Period of Diversion: JUNE 15 TO DECEMBER 31				
		Means of Diversion: LIVESTOCK DIRECT FROM SOURCE				
3		SESW	14	4N	6E	GALLATIN
		Period of Diversion: JUNE 15 TO DECEMBER 31				
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		Means of Diversion: LIVESTOCK DIRECT FROM SOURCE				
6		NWSWSE	14	4N	6E	GALLATIN
		Period of Diversion: JUNE 15 TO DECEMBER 31				
		Means of Diversion: LIVESTOCK DIRECT FROM SOURCE				

Place of Use:

<u>ID</u>	<u>Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
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6		NWSWSE	14	4N	6E	GALLATIN

411 132667-00

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Maximum Acres: 133.00

Point of Diversion and Means of Diversion:

ID	Lot	Qtr	Sec	Twp	Rge	County
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		Period of Diversion: JUNE 15 TO DECEMBER 31				
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9	3		18	4N	7E	GALLATIN
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4. On November 26, 2024, objector BOR filed a *Statement Regarding Notice of Amendments* (Doc. 6.00)². The *Statement* asserts that if the Court were to implement that Claimant’s proposed modifications, the United States’ objections would be resolved.

PRINCIPLES OF LAW

1. 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.

2. 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.

3. 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.

4. 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.

² *Id.*

5. A claimant asserting an amendment to its claim has the burden to show that the historical use of the claim is accurately reflected by the requested amendment. *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

CONCLUSION OF LAW

1. Based on the information contained in the Record, including the fact that the documentation supporting the initial filing of the rights includes language that the water is “intended to be used for irrigating *and other purposes*,” as well as multiple sworn affidavits attesting to historical use for stock water, the amendments overcome the prima facie status of the Statements of Claim. Therefore, the proposed modifications should be made to each claim as described in Finding of Fact No. 3. These modifications resolve the BOR objections and issue remarks appearing on each claim, and the issue remarks should be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify the claims as described above and remove the issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 411 132666-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BERG FAMILY RANCH AT HATFIELD MOUNTAIN LLC
PO BOX 386
WHITE SULPHUR SPRINGS, MT 59645-0386

Priority Date: AUGUST 24, 1902

Type of Historical Right: FILED

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 WATER 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: UNNAMED TRIBUTARY OF SIXTEENMILE CREEK, MIDDLE FORK

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>
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Status: ACTIVE

Owners: BERG FAMILY RANCH AT HATFIELD MOUNTAIN LLC
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Priority Date: JULY 31, 1898

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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>
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