

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**

CLAIMANT: Flynn Hay & Grain Inc.

OBJECTOR: United States of America (Dept of Agriculture
Forest Service)

CASE 41I-0084-R-2023
41I 30132154

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 30132154 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Flynn

Hay & Grain Inc. The United States Department of Agriculture, Forest Service (Forest Service) objected to the claim. The claim 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

1. Claim 41I 30132154 appeared in the Basin 41I Preliminary Decree as a claim for stock drinking directly from Boulder Creek in the following locations:

<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			S2S2	25	10N	2E	BROADWATER
2			N2	31	10N	3E	BROADWATER

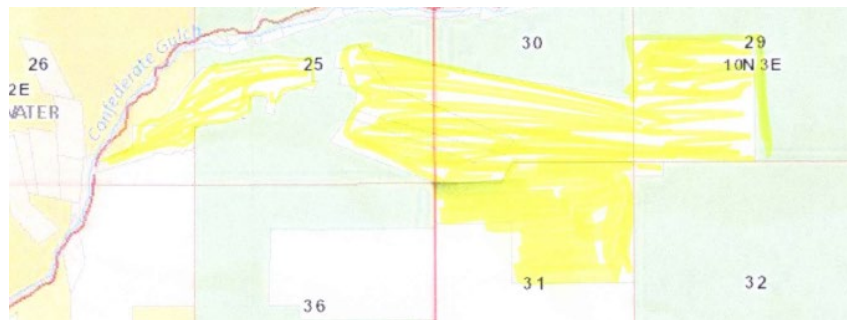
2. The Forest Service objected to the claim, stating:

The point of diversion and place of use ID No. 1 should be removed, as the source does not flow through claimant's land in this section.

3. The claim also received the following issue remarks:

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON FEDERAL LAND.
THIS CLAIM'S POINT OF DIVERSION AND PLACE OF USE NO. 1 OVERLAPS CLAIM NO. 41I 55877 00 POINT OF DIVERSION AND PLACE OF USE NO.5

4. The map attached to the exempt claim filing for claim 41I 30132154 showed the point of diversion and place of use as follows:



5. However, the claimed source – Boulder Creek – does not flow through the claimed parcels in the S2S2 of Section 25, T10N, R2E, Broadwater County:



6. On July 23, 2024, the Court held a status conference in this matter. Kate Laubach appeared on behalf of the United States. No one appeared on behalf of Flynn Hay & Grain Inc.

7. The Court ordered Flynn Hay & Grain Inc. to show cause why the S2S2 of Section 25, T10N, R2E, Broadwater County should not be removed from the claim. The order stated that “[i]f nothing is filed by the deadline, the S2S2 of Section 25, T10N, R2E, Broadwater County will be removed from claim 41I 30132154.” Nothing was filed by the deadline.

8. Finally, the claim received the following notice-type issue remark:

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

9. 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.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

9. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The objection and issue remarks overcome the prima facie status of claim 41I 30132154. Based on the evidence before the Court, the S2S2 of Section 25, T10N, R2E, Broadwater County is not part of the historical use under claim 41I 30132154.

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

RECOMMENDATIONS

1. The S2S2 of Section 25, T10N, R2E, Broadwater County should be removed from the point of diversion and place of use for claim 41I 30132154.

2. The issue remarks should be removed from claim 41I 30132154.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

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: 411 30132154 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: FLYNN HAY & GRAIN INC
209 FLYNN LN
TOWNSEND, MT 59644-9770

Priority Date: JULY 31, 1922

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: BOULDER CREEK

Source Type: SURFACE WATER

SOURCE IS COMPOSED OF ONE UNNAMED TRIBUTARY WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

***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		N2	31	10N	3E	BROADWATER

Period of Diversion: JUNE 1 TO OCTOBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JUNE 1 TO OCTOBER 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			N2	31	10N	3E	BROADWATER