

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

CLAIMANT: C5 Rodeo MT LLLP

CASE 41I-1042-R-2024

41I 100487-00
41I 100488-00
41I 100489-00
41I 100490-00
41I 100491-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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.

The claims were consolidated into Case 41I-1042-R-2024 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

FINDINGS OF FACT

1. Claims 41I 100487-00 and 41I 100488-00 received the following substantive issue remark:

THE POINT OF DIVERSION NO. 1 APPEARS INCORRECT. POINT OF DIVERSION NO. 1 APPEARS TO BE SWSESE SEC 18 TWP 13N RGE 3W LEWIS AND CLARK COUNTY.

Claims 41I 100489-00 and 41I 100491-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSESE SEC 18 TWP 13N RGE 3W LEWIS AND CLARK COUNTY.

Claim 41I 100490-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWNESE SEC 19 TWP 13N RGE 3W LEWIS AND CLARK COUNTY.

Claims 41I 100489-00 and 41I 100491-00 also received the following substantive issue remark:

THE POINT OF DIVERSION IS QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, IT APPEARS TWO ADDITIONAL DIVERSIONS SHOULD BE LISTED.

2. On October 9, 2024, the Court consolidated the above-captioned claims into case 41I-1042-R-2024 and set a filing deadline for the Claimant to respond if they did not agree with the proposed modifications to the point of diversion and to file a statement if they believed that claims 41I 100489-00 and 41I 100491-00 required additional points of diversion. Nothing was filed by the ordered deadline. The Order Setting Filing Deadline included the following language regarding the above-listed issue remarks:

ORDERED that the Claimants review this order and, *if necessary*, file information or evidence if they do not believe the points of diversion should be modified as described in the above-listed issue remarks by **Wednesday, November 13, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimant agrees that the points of diversion for claims 41I 100487-00, 41I 100488-00, 41I 100489-00, 41I 100490-00, and 41I 100491-00, the points of diversion will be modified accordingly, and the issue remarks will be removed from the claims.*

ORDERED that the Claimants review this order and, *if necessary*, file information or evidence if they believe there should be additional points of diversion added to claims 41I 100489-00 and 41I 100491-00 by **Wednesday, November 13, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimant does not agree that additional points of diversion should be added to claims 41I 100489-00 and 41I 100491-00, no additional point of diversion will be added, and the issue remarks will be removed from the claims.*

3. Claims 41I 100487-00 and 41I 100488-00 also received a notice-type issue remark from the DNRC during its reexamination of claims. No objections were filed.

PRINCIPLES OF LAW

1. 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.

2. 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.

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).

CONCLUSION OF LAW

1. The information in the record resolves issue remark proposing modification to the existing points of diversion appearing on the above-captioned claims. Because nothing was filed at the filing deadline by the Claimants, and the DNRC provided sufficient information supporting the issue remarks, the issue remarks overcome the prima facie status afforded the Statement of Claim for claims 41I 100487-00, 41I

100488-00, 41I 100489-00, 41I 100490-00, and 41I 100491-00, a preponderance of the evidence shows that the existing points of diversion should be modified as described in Finding of Fact No. 1, and the issue remarks should be removed from the claims.

2. The information in the record resolves issue remarks proposing the addition of point of diversion appearing on claims 41I 100489-00 and 41I 100491-00. Because nothing was filed at the filing deadline by the Claimants, and the DNRC did not provide sufficient information supporting the issue remarks, the issue remarks do not overcome the prima facie status afforded the Statement of Claim for claims 41I 100489-00 and 41I 100491-00. No additional points of diversion should be added to either claim, and the issue remarks should be removed from the claims.

3. The notice-type issue remarks appearing on claims 41I 100487-00 and 41I 100488-00 served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the existing point of diversion for claims 41I 100487-00, 41I 100488-00, 41I 100489-00, 41I 100490-00, and 41I 100491-00 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.

Service via USPS Mail:

C5 Rodeo MT LLLP
PO Box 1885
Lac La Biche AB T0A 2C0
Canada

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

Water Right Number: 41I 100487-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: C5 RODEO MT LLLP
PO BOX 1885
LAC LA BICHE AB T0A 2C0
CANADA

Priority Date: JUNE 28, 1901

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 7.50 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 95.00

***Source Name:** TOWHEAD 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		SWSESE	18	13N	3W	LEWIS AND CLARK

Period of Diversion: APRIL 10 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: UPPER HILGER DITCH

2		NWNENE	19	13N	3W	LEWIS AND CLARK
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Period of Diversion: APRIL 10 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HILGER DITCH

Period of Use: APRIL 10 TO NOVEMBER 1

***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	5.00		W2NESE	20	13N	3W	LEWIS AND CLARK
2	37.00		NWSE	20	13N	3W	LEWIS AND CLARK
3	40.00		SWSE	20	13N	3W	LEWIS AND CLARK
4	13.00		NWNE	29	13N	3W	LEWIS AND CLARK

Total: 95.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

100485-00 100487-00 100488-00 100494-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

100487-00 100491-00

THIS RIGHT AND AUTHORIZATION NO 41I-G090061-00 HAVE OVERLAPPING PLACES OF USE

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

Water Right Number: 411 100488-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: C5 RODEO MT LLLP
PO BOX 1885
LAC LA BICHE AB T0A 2C0
CANADA

Priority Date: OCTOBER 5, 1901

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 5.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 95.00

***Source Name:** TOWHEAD 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		SWSESE	18	13N	3W	LEWIS AND CLARK

Period of Diversion: APRIL 10 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: UPPER HILGER DITCH

2		NWNENE	19	13N	3W	LEWIS AND CLARK
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Period of Diversion: APRIL 10 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HILGER DITCH

Period of Use: APRIL 10 TO NOVEMBER 1

***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	5.00		W2NESE	20	13N	3W	LEWIS AND CLARK
2	37.00		NWSE	20	13N	3W	LEWIS AND CLARK
3	40.00		SWSE	20	13N	3W	LEWIS AND CLARK
4	13.00		NWNE	29	13N	3W	LEWIS AND CLARK

Total: 95.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

100485-00 100487-00 100488-00 100494-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

100488-00 100489-00

THIS RIGHT AND AUTHORIZATION NO 41I-G090161-00 HAVE OVERLAPPING PLACES OF USE

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

Water Right Number: 411 100489-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: C5 RODEO MT LLLP
PO BOX 1885
LAC LA BICHE AB T0A 2C0
CANADA

Priority Date: OCTOBER 5, 1901

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 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: TOWHEAD 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		SWSESE	18	13N	3W	LEWIS AND CLARK

Period of Diversion: APRIL 10 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: UPPER HILGER DITCH

Period of Use: APRIL 10 TO NOVEMBER 1

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				20	13N	3W	LEWIS AND CLARK
2				29	13N	3W	LEWIS AND CLARK
3			N2	32	13N	3W	LEWIS AND CLARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

100488-00

100489-00

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

Water Right Number: 411 100490-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: C5 RODEO MT LLLP
PO BOX 1885
LAC LA BICHE AB T0A 2C0
CANADA

Priority Date: MAY 31, 1950

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 5.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 20.00

Source Name: TOWHEAD 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		SWNE	19	13N	3W	LEWIS AND CLARK

Period of Diversion: APRIL 10 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HILGER DITCH

Period of Use: APRIL 10 TO NOVEMBER 1

***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	8.00		W2SWSW	20	13N	3W	LEWIS AND CLARK
2	12.00		W2NWNW	29	13N	3W	LEWIS AND CLARK

Total: 20.00

Remarks:

THIS RIGHT AND AUTHORIZATION NO 411-G090161-00 HAVE OVERLAPPING PLACES OF USE.

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

Water Right Number: 41I 100491-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: C5 RODEO MT LLLP
PO BOX 1885
LAC LA BICHE AB T0A 2C0
CANADA

Priority Date: JUNE 28, 1901

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 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: TOWHEAD 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		SWSESE	18	13N	3W	LEWIS AND CLARK

Period of Diversion: APRIL 10 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: UPPER HILGER DITCH

Period of Use: APRIL 10 TO NOVEMBER 1

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				20	13N	3W	LEWIS AND CLARK
2				29	13N	3W	LEWIS AND CLARK
3			N2	32	13N	3W	LEWIS AND CLARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

100487-00

100491-00