

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: Jeffery Sanderson

NOTICE OF INTENT TO APPEAR: Hensley Farms LLC

CASE 41I-2049-R-2024

41I 10387-00

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 to 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

Water right claim 41I 10387-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received issue remarks from the Department of Natural Resources and Conservation

(DNRC) raising potential legal or factual issues with the claim and a Notice of Intent to Appear from Hensley Farms LLC. The Water Court consolidated the claim into case 41I-2049-R-2024 to address these issues.

The Water Court reviewed the issue remarks on the claim and requested input from the Claimant in response to the remarks. The Claimant did not respond. The Court determined that absent participation from the Claimant, a correction of the point of diversion for the claim should be made in response to an issue remark. The Court gave the parties another opportunity to participate and informed the Claimant and Hensley Farms LLC that if nothing were filed by the deadline, the point of diversion would be corrected and the issue remarks would be removed from the claim. Doc. 2.00.¹ Nothing was filed.

FINDINGS OF FACT

1. Claim 41I 10387-00 was decreed with the following substantive issue remarks:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWSNW SEC 22 TWP 5N RGE 1E BROADWATER COUNTY.

THE CLAIMED SOURCE MAY BE QUESTIONABLE. THE SOURCE DESCRIBED IN CASE NO. 236, , BROADWATER COUNTY, IS INCONSISTENT WITH THE SOURCE AT THE CLAIMED POINT OF DIVERSION.

2. Upon review of the claim and claim file, the source issue remark does not raise an issue with the source of this claim. The claimants originally identified the source for this right as Crow Creek, consistent with Case No. 236, Broadwater County. A map in the claim file indicates the source at the point of diversion was identified as Lower Crow Creek in the 1956 Water Resources Survey. The map also shows that the source later became known as Swamp Creek and the DNRC modified the source name accordingly. This explains why the source on the abstract differs from the decreed source.

3. The point of diversion should be modified as follows in response to the point of diversion issue remark:

Point of Diversion: ~~SWSNW~~ Section 22, T5N, R1E
NWSNW

¹ "Doc." refers to the docket number of a document filed in the Water Court's Full Court Enterprise Case Management system.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The source issue remark fails to overcome the prima facie status of the claim and the point of diversion issue remark is resolved by the correction described above. The issue remarks should be removed from the claim.

RECOMMENDATIONS

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

An abstract reflecting the recommended changes is attached to this Report for review.

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 10387-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JEFFERY SANDERSON
50 MONTANA HWY 437
TOSTON, MT 59643-9736

Priority Date: MAY 1, 1874

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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: 80.00

Source Name: SWAMP CREEK

Source Type: SURFACE WATER

CROW CREEK AND SWAMP CREEK HAVE COMMINGLED WATERS. LOWER CROW CREEK CHANNEL SPLITS FROM CROW CREEK (AKA UPPER CROW CREEK CHANNEL) IN THE NENESE SEC 5 TWP 6N RGE 1E BROADWATER COUNTY FLOWING SOUTH TO COMMINGLE WATER WITH SWAMP CREEK BEGINNING IN THE NENESW SEC 16 TWP 5N RGE 1 E BROADWATER COUNTY AND SEPARATING AT NENESE SEC 22 TWP 5N RGE 1E BROADWATER COUNTY. CROW CREEK WATER THEN TRAVELS TO SWSWSW SEC 21 TWP 5N RGE 2E BROADWATER COUNTY TO THE CONFLUENCE WITH WARM SPRINGS CREEK.

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		NWSE	22	5N	1E	BROADWATER

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: SPANGLER DITCH

Period of Use: MAY 1 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	40.00		NWNW	26	5N	1E	BROADWATER
2	40.00		NENE	27	5N	1E	BROADWATER

Total: 80.00