

Montana Water Court
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FILED
01/02/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Regina Certalic
41S-0987-R-2024
Stern, Anika
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANTS: Melvin Hayes; Charles Hayes

CASE 41S-0987-R-2024
41S 2384-00

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, 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 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

FINDINGS OF FACT

1. Melvin Hayes and Charles Hayes (the Hayes) are the record owners of irrigation claim 41S 2384-00.

2. The Hayes were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claim 41S 2384-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

3. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum on December 18, 2024. (Doc.¹ 2.00). Mr. Ahlgren stated claimant contact is not necessary as he substantiated the claimed acres using USDA aerial photograph 30027-278-194, which is part of the record. Mr. Ahlgren recommended the issue remarks be removed from claim 41S 2384-00.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim. Section 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564. In the present instance, the issue remarks did not overcome the prima facie statement of claim.

RECOMMENDATION

1. The issue remarks should be removed from claim 41S 2384-00.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Service via USPS Mail:

Melvin Hayes
Charles Hayes
49 Roundhouse Rd
Lewistown, MT 59457-8767

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 2384-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CHARLES HAYES
49 ROUNDHOUSE RD
LEWISTOWN, MT 59457-8767

MELVIN HAYES
49 ROUNDHOUSE RD
LEWISTOWN, MT 59457-8767

Priority Date: DECEMBER 31, 1964

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 20.00 GPM

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 2.00

Source Name: BIG SPRING CREEK

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		NESENE	22	15N	18E	FERGUS

Period of Diversion: MAY 15 TO NOVEMBER 30

Diversion Means: PUMP

Period of Use: MAY 15 TO NOVEMBER 30

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	2.00		NESENE	22	15N	18E	FERGUS

Total: 2.00