

Montana Water Court
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FILED
03/20/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-0029-R-2023
Lockman, Melissa
16.00

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

* * * * *

CLAIMANTS: United States of America (Bureau of Land
Management)

COUNTEROBJECTOR: Charles P. Hahn

NOTICE OF INTENT TO APPEAR: Staubach Creek Ranch LLC

CASE 41I-0029-R-2023

41I 49534-00

41I 49535-00

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

Claim 41I 49534-00 and 41I 49535-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. Charles P. Hahn (“Hahn”) counterobjected to both claims. Staubach Creek Ranch LLC filed a notice of intent to appear on claim 41I 49534-00.

FINDINGS OF FACT

1. After an initial settlement period, Hahn withdrew his counterobjections to claims 41I 49534-00 and 41I 49535-00. (Doc.¹ 15.00).

2. Claim 41I 49534-00 received the following remark:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

3. The notice-only issue remark notes the point of diversion was modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remark indicate that if no objections are filed, the point of diversion will remain as it appeared on the abstract and the remarks will be removed. The counterobjection to claim 41I 49534-00 was withdrawn.

PRINCIPLES OF LAW

1. Rule 2(a), W.R.C.E.R., includes the following definition:

(57) “Remarks” means statements added to the decree abstract by the department or the water court to limit or define a water right, to explain unique aspects of the water right, and to identify potential factual and legal issues. Remarks that limit, define, or explain unique aspects of a claim are “clarifying” or “information” remarks. Remarks that identify potential factual and legal issues are “issue” remarks.

2. Section 85-2-247, MCA, refers to “valid issues raised as a result of claims examination” and directs that these issues be resolved prior to issuance of the final decree. Section 85-2-248, MCA, details the process to be used to resolve the issues raised in an issue remark. Clearly these directions apply when there are *issues raised and identified in an issue remark*.

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

3. A notice of intent to appear may be filed by any person, other than the claimant or objector, who wishes to participate in the proceedings for a particular claim. Rule 9(b), W.R.Adj.R.

4. There must be proceedings in which a notice of intent to appear party can appear. The proceedings are based on an objection, a counterobjection, an issue remark, or a Rule 8, W.R.Adj.R., motion of the Montana Water Court. Absent such proceedings, the notice of intent to appear party has nothing in which it can appear. A notice of intent to appear cannot raise a new issue, thereby creating the very proceedings in which it wishes to appear. *In re Erb*, 2016 Mont. Water LEXIS 2, at 12, states:

In summary, the language of Rule 9(b) and Rule 10, W.R.Adj.R. prohibit an NOIA party from expanding the issues in a water rights case. Under these rules, such a party is limited to participating in resolution of issues raised by objections, counterobjections, issue remarks, or issues raised on motion of the Water Court.

CONCLUSIONS OF LAW

1. The remark on claim 41I 49534-00 provides notice that the point of diversion was modified during reexamination. It then states *if no objections are filed*, the point of diversion will remain as it appeared on the abstract, and the remark will be removed. The clear import and purpose of this remark is to provide notice of the change and to inform everyone that the change will stay in place unless someone objects to it. This remark does not raise any issues about the point of diversion which need to be addressed and resolved. There is nothing for the Court to do except remove the remark from the abstract.

This remark does not raise any issues. It is not an issue remark. It is a notice remark.

2. Because the counterobjection to claim 41I 49534-00 was withdrawn and there is no issue remark on the abstract of this claim, the notice of intent to appear filed by Staubach Creek Ranch LLC should be dismissed as there are no proceedings for this claim in which Staubach Creek Ranch LLC can appear.

RECOMMENDATIONS

1. The notice remark should be removed from the claim 41I 49534-00 abstract.
2. The notice of intent to appear filed by Staubach Creek Ranch LLC should be dismissed.

A post decree abstract of each 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: 41I 49534-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101-4669

Priority Date: AUGUST 1, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 13.50 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:** 303.00

Source Name: BEAVER 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		SENWSW	1	8N	1W	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: MCMASTER DITCH

Period of Use: APRIL 15 TO OCTOBER 15

***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	47.00		S2SW	15	9N	1W	BROADWATER
2	37.00		W2NW	22	9N	1W	BROADWATER
3	58.25		S2NE	22	9N	1W	BROADWATER
4	133.75		SE	22	9N	1W	BROADWATER
5	27.00		S2NW	23	9N	1W	BROADWATER

Total: 303.00

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.

49534-00

49535-00

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

Water Right Number: 41I 49535-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101-4669

Priority Date: MAY 1, 1893

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 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:** 303.00

Source Name: BEAVER 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		SENWSW	1	8N	1W	BROADWATER

Period of Diversion: MAY 15 TO AUGUST 15

Diversion Means: HEADGATE

Ditch Name: MCMASTER DITCH

Period of Use: MAY 15 TO AUGUST 15

***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	47.00		S2SW	15	9N	1W	BROADWATER
2	37.00		W2NW	22	9N	1W	BROADWATER
3	58.25		S2NE	22	9N	1W	BROADWATER
4	133.75		SE	22	9N	1W	BROADWATER
5	27.00		S2NW	23	9N	1W	BROADWATER
Total:	303.00						

Remarks:

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