

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

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CLAIMANT: Grunenfelder Family Partnership LLP

CASE 41I-0154-R-2025
41I 89327-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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 89327-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Grunenfelder Family Partnership LLP. The claim received an issue remark. 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 89327-00 was decreed as a placer mining claim that diverts water from the following sources:

*Source Name:	SPRING, UNNAMED TRIBUTARY OF NELSON GULCH
Source Type:	SURFACE WATER
*Source Name:	UNNAMED TRIBUTARY OF NELSON GULCH
Source Type:	SURFACE WATER

2. The claim received the following issue remark:

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

3. The Court ordered that Claimants work with DNRC to resolve source issue remark on claim 41I 89327-00 by May 9, 2025. Claimants did not contact DNRC as ordered.

4. On May 14, 2025, DNRC Water Resource Specialist Kirsten Walsh filed a memorandum on claim 41I 89327-00. (Doc.¹ 2.00). Ms. Walsh recommends the source name for all points of diversion for claim 41I 89327-00 be Nelson Gulch.

5. The Court ordered Claimants to show cause why the source for all points of diversion for claim 41I 89327-00 should not be modified to Nelson Gulch. (Doc. 3.00). The order stated that “[i]f nothing is filed by the deadline, the source name for all points of diversion for claim 41I 89327-00 will be modified to Nelson Gulch.” Nothing was filed by the deadline.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Mont. Code Ann. § 85-2-227 (2025); 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.

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

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. §§ 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. § 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.

CONCLUSION OF LAW

1. The source name issue remark overcomes the prima facie status of the claim. The evidence in the claim file and provided in the memorandum show that Nelson Gulch is the historically accurate source for all points of diversion on claim 41I 89327-00.

RECOMMENDATIONS

1. The source name for all points of diversion on claim 41I 89327-00 should be modified to Nelson Gulch.

2. The issue remark should be removed from the claim abstract.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Usps Mail

Grunenfelder Family Partnership LLP
154 Brushwood Dr
Loveland, OH 45140-2612

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

Water Right Number: 41I 89327-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GRUNENFELDER FAMILY PARTNERSHIP LLP
154 BRUSHWOOD DR
LOVELAND, OH 45140-2612

Priority Date: APRIL 2, 1890

Type of Historical Right: USE

Purpose (Use): MINING
PLACER MINING

Flow Rate: 50.00 GPM

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: NELSON 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		E2	6	9N	4W	LEWIS AND CLARK

Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: DIVERSION DAM

2		E2NE	7	9N	4W	LEWIS AND CLARK
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Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: DIVERSION DAM

3	5	W2SWNW	8	9N	4W	LEWIS AND CLARK
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Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: DIVERSION DAM

4		E2SE	31	10N	4W	LEWIS AND CLARK
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Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: DIVERSION DAM

MEANS OF DIVERSION INCLUDES A SLUICE BOX, BUCKET, OR OTHER CONTAINER.

Period of Use: APRIL 15 TO NOVEMBER 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			E2	6	9N	4W	LEWIS AND CLARK
2			E2NE	7	9N	4W	LEWIS AND CLARK
3		5	W2SWNW	8	9N	4W	LEWIS AND CLARK
4			E2SE	31	10N	4W	LEWIS AND CLARK

Remarks:

ALL PLACES OF USE AND POINTS OF DIVERSION LOCATED IN SECTIONS 06 AND 07 OF TWP 09N, RGE 04W AND IN SECTION 31 OF TWP 10N RGE 04W ARE LOCATED WITHIN PATENT NO. 5803, MINERAL ENTRY NO. 637-NELSON GULCH PLACER, AND DO NOT INCLUDE PUBLIC LAND.