

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

* * * * *

CLAIMANT: Jerry D. Hanley

CASE 41S-6002-A-2025
41S 135584-00

ORDER GRANTING AMENDMENT AND CLOSING CASE

This order addresses the Motion to Amend claim 41S 135584-00 filed by Jerry D. Hanley (“Hanley”) on April 17, 2025. (Doc. 1.00).¹

Background

Claim 41S 135584-00 is owned by Jerry D. Hanley (“Hanley”). The claim is for mining using water from an unnamed tributary of Warm Springs Creek with a September 19, 1892 priority date. The Water Court included the claim in the Preliminary Decree for Basin 41S, issued on August 18, 2022 with the following issue remark:

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE
HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Hanley received notice of the issuance of the Preliminary Decree, notice of the issue remark, and notice of his opportunity to object to correct the claim. No objections were filed to claim 41S 135584-00. On September 30, 2024, a Master’s Report consolidated the claim in case 41S-0959-R-2024 and recommended no corrections to the claim other than removing the issue remark. Hanley received notice of an opportunity to

¹ As used in this Order, the abbreviation “Doc.” refers to the document sequence number in the Court’s Full Court Enterprise case management system.

object to the Master's Report. No objections were filed to the Master's Report. An Order Adopting the Report was issued on October 18, 2024.

On April 17, 2025, Hanley filed this motion to amend requesting to correct a "mapping mistake" affecting claim 41S 135584-00. (Doc. 1.00). Hanley stated he intended to "correct the clerical error on the map and all applicable downstream documents." According to the motion, a correction should be made to the point of diversion. Hanley requested the point of diversion be corrected from SWNESE of Section 31, T17N R20E to SWNESE of Section 36, T17N, R19E. Section 36, T17N, R19E is held by Montana State Lands.

Hanley had notice of a potential issue with the point of diversion of claim 41S 135584-00 when the Preliminary Decree was issued, when the objection list was published identifying the point of diversion element, and when the Master's Report was issued. However, Hanley did not file an objection to the claim or an objection to the Master's Report.

Standards for Motions to Amend

Section 85-2-233(6), Mont. Code Ann. and Rule 10, Water Right Adjudication Rules, authorize motions to amend. When a party seeks to amend elements of their own water right claim, the party must prove by a preponderance of evidence that the proposed modification overcomes the prima facie status of the claim. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558. If the Court determines claim modifications in a motion to amend may adversely affect other water users, the Court requires notice and the opportunity to object before approving the modification. § 85-2-233(6), MCA.

Application

The Water Court required Hanley to publish notice of the motion to amend pursuant to § 85-2-233(6), MCA, and added Montana State Lands to the service list for this case. (Doc. 2.00). Hanley published notice pursuant to the Court's April 23, 2025 Order. (Docs. 5.00, 6.00). No objections were filed to the amendment, including from Montana State Lands.

According to Hanley's request to amend, the original map provided with the claim form for 41S 135584-00 contains the wrong township, range and section labels. With the motion to amend, Hanley attached the original claim map and identified the correct section, township and range labels. (Doc. 1.00). What was labeled Section 31, Township 17N, Range 20E should be Section 36, Township 17N, Range 19 East. Further, the surrounding sections were also labeled incorrectly. A comparison of the original claim map with the Montana Cadastral Map confirms the requested amendments are accurate. Thus, there is sufficient evidence to overcome the prima facie status of the claim and correct the point of diversion to reflect the proper legal description.

Therefore, it is

ORDERED that Hanley's motion to amend claim 41S 135584-00 is GRANTED. A post decree abstract of the claim is filed with this Order to show the amendment has been made in the state's water right database.

ORDERED that proceedings in this case are CLOSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Jerry D. Hanley
PO Box 851
Lewistown, MT 59457

Last Order:

State of Montana
Board of Land Commissioners
PO Box 201601
Helena, MT 59620

Service Via Electronic Mail:

Brian C. Bramblett
Montana Department of Natural
Resources and Conservation
bbramblett@mt.gov
jean.saye@mt.gov

Note: Service List Updated 9-19-25

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

Water Right Number: 41S 135584-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

Priority Date: SEPTEMBER 19, 1892

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 1.25 CFS

Volume: 453.61 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED,
IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF WARM 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		SWNESE	36	17N	19E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

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			N2SW	5	16N	20E	FERGUS