

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: RJK Investments Inc.

OBJECTORS: Ronald J. Keeler; United States of America (Dept
of Agriculture Forest Service)

**CASE 41I-2025-R-2023
41I 5076-00**

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 5076-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received objections from the United States Forest Service (“United States”) and Ronald Keeler, and issue remarks from the Department of Natural Resources and Conservation (“DNRC”) raising potential legal or factual issues with the claim. The Water Court consolidated the claim into case 41I-2025-R-2023 to address the remarks and objections.

On March 22, 2024, the parties filed a stipulation signed by Ronald Keeler for RJK investments and Judith Coleman for the United States (“Stipulation”). Doc. 4.00.¹ The Stipulation states that upon entry of a ruling and final order in this case reflecting amendments in the Stipulation, the United States objection shall be deemed resolved.

FINDINGS OF FACT

1. The United States objected to the point of diversion of claim 41I 5076-00. Pursuant to the Stipulation and attached map, the point of diversion description should be corrected as follows to reflect that water is diverted on private land, not federal land:

<u>ID</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1	<u>SWSWSE</u>	<u>NENENW</u>	<u>4</u>	8N	1W	<u>BROADWATER</u>

2. The claim received the following substantive issue remark:

THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 341.10 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

Ronald Keeler’s objection seeks to resolve this remark and states the decreed maximum acres are correct. The place of use and maximum irrigated acres for this claim were previously determined in a March 25, 1998 master’s report in Case 41I-227 (adopted April 27, 1998). The maximum irrigated acres are correct as decreed.

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

3. The claim also received the following issue remarks that serve only to provide notice to the Claimant and other water users (Notice Only Remarks):

DITCH NAME 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.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

PRINCIPLES OF LAW

1. 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.

2. The Water Court is not bound by settlement agreements. Settlement agreements are subject to review and approval of the Water Court. Rule 17, W.R.Adj.R. Where a settlement seeks to enlarge or expand an element of a claim, the documentation supporting the settlement must include sufficient evidence to meet the burden of proof. Rule 17(b), W.R.Adj.R.

3. 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.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The claim should be modified as described above. This modification resolves the United States' objection in this case.

2. The issue raised by the substantive issue remark has been addressed by the Court. The Notice Only Remarks have served their notice purpose. The issue remarks

should be removed from the claims. Removal of the substantive remark resolves Ronald Keeler's objection.

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.

A Post Decree Abstract of Water Right Claim reflecting the recommended changes is attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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

Water Right Number: 411 5076-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RJK INVESTMENTS INC
PO BOX 1340
EAST HELENA, MT 59635-1340

Priority Date: MAY 31, 1893

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.13 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:** 555.90

Source Name: STAUBACH 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		SWSWSE	4	8N	1W	BROADWATER

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: QUARTER CIRCLE JF DITCH

Period of Use: MAY 1 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	56.00		SE	27	9N	1W	BROADWATER
2	64.50		SW	27	9N	1W	BROADWATER
3	86.00		SE	28	9N	1W	BROADWATER
4	110.30		N2	33	9N	1W	BROADWATER
5	5.00		SE	34	9N	1W	BROADWATER
6	37.50		SW	34	9N	1W	BROADWATER
7	50.20		NE	34	9N	1W	BROADWATER
8	146.40		NW	34	9N	1W	BROADWATER

Total: 555.90

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.

5076-00

5077-00

5078-00

5079-00

5080-00