

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

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

\*\*\*\*\*

CLAIMANTS: Darrell E. Baum; JDB Family Trust; Nancy B.  
Kane

**CASE 41I-2028-R-2024**  
41I 6479-00  
41I 10377-00  
41I 10380-00  
41I 30130556

**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

The water right claims listed above appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claims did not receive objections but received issue remarks from the Department of Natural Resources and Conservation (“DNRC”) raising potential legal or factual issues with the claims. The Water Court consolidated the claim into case 41I-2028-R-2024 to address these issues.

On January 18, 2024, the Water Court issued an Order Consolidating Claims and Setting Filing deadlines. Doc. 1.00.<sup>1</sup> The Order explained the issue remarks on the claims and requested that the Claimants contact the Court if they believed action should be taken in response to the issue remarks. The Court informed the Claimants that if nothing was filed by the deadline, the Court would conclude the Claimants agree the rights are accurate as decreed, and the remarks would be removed from the claims. Nothing was filed by the deadline.

### FINDINGS OF FACT

#### 41I 6479-00

1. Claim 41I 6479-00 received the following issue remark, which serves only to provide notice to the Claimants and other water users (Notice Only Remark):

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON BEAVER CREEK WITH A PRIORITY DATE PREDATING CASE NO 208, BROADWATER COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

#### 41I 10377-00 and 41I 10380-00

2. Claims 41I 10377-00 and 41I 10380-00 received the following substantive issue remarks:

THE BROADWATER COUNTY WATER RESOURCES SURVEY ( 1956 ) APPEARS TO INDICATE 32.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

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

---

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

These claims were included in prior Water Court proceedings in which the Water Court specifically determined the irrigated acres for these claims. See, Case 41I-234, Master's Report, January 30, 1998 (adopted March 5, 1998). The Claimants do not believe a modification is necessary. The maximum acres are accurate as decreed.

41I 30130556

3. Claim 30130556 a received the following substantive issue remark:

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

Multiple sources do not always indicate multiple water rights. The Statement of Claim appears to identify one herd of cattle diverting water as of a single priority date. The Claimants agree the claim is accurate as decreed and the remark should be removed.

The claim also received the following Notice Only Remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41I DECREE ISSUED  
03/08/1995.

PRINCIPLES OF LAW

1. 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.

2. 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.

CONCLUSIONS OF LAW

1. The substantive issue remarks on claims 41I 10377-00 and 41I 10380-00 have been addressed by the Court and are resolved. The substantive issue remark on claim 41I 30130556 fails to overcome the prima facie status of the claim. The Notice Only Remarks have served their notice purpose. The issue remarks should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove the issue remarks from the claims.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

*Service via USPS Mail:*

Darrell E. Baum  
190 Pole Creek Road  
Winston, MT 59647-8501

JDB Family Trust  
% Douglas B & Joanne Baum Trustees  
52 Filson Road  
Winston, MT 59647-8400

Nancy B. Kane  
PO Box 564  
Broadus, MT 59317-0564

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

**Water Right Number:** 411 6479-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DARRELL E BAUM  
190 POLE CREEK RD  
WINSTON, MT 59647-8501  
  
JDB FAMILY TRUST  
% DOUGLAS B & JOANNE BAUM TRUSTEES  
52 FILSON RD  
WINSTON, MT 59647-8400

**Priority Date:** NOVEMBER 26, 1904

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.00 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:** 219.50

**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		SWSWSW	1	8N	1W	BROADWATER

**Period of Diversion:** APRIL 15 TO JULY 15

**Diversion Means:** HEADGATE

**Ditch Name:** BAUM DITCH

**Period of Use:** APRIL 15 TO JULY 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	32.50		NWNW	26	9N	1W	BROADWATER
2	6.00		SWNW	26	9N	1W	BROADWATER
3	130.00		E2W2	26	9N	1W	BROADWATER
4	51.00		NE	35	9N	1W	BROADWATER

**Total:** 219.50

**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.

6479-00

6480-00

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

**Water Right Number:** 41I 10377-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DARRELL E BAUM  
190 POLE CREEK RD  
WINSTON, MT 59647-8501

NANCY B KANE  
PO BOX 564  
BROADUS, MT 59317-0564

**Priority Date:** JULY 1, 1901

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 170.54 GPM

**\*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:** 89.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF NORTH POLE 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		NENENE	16	8N	1W	BROADWATER

**Period of Diversion:** APRIL 1 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** BISBY DITCH

**Period of Use:** APRIL 1 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	1.00		SENESE	3	8N	1W	BROADWATER
2	25.50		SESE	3	8N	1W	BROADWATER
3	33.00		SWSE	3	8N	1W	BROADWATER
4	8.00		NENE	10	8N	1W	BROADWATER
5	21.50		NWNE	10	8N	1W	BROADWATER

**Total:** 89.00

**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.

10377-00

10380-00



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

**Water Right Number:** 41I 10380-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DARRELL E BAUM  
190 POLE CREEK RD  
WINSTON, MT 59647-8501

NANCY B KANE  
PO BOX 564  
BROADUS, MT 59317-0564

**Priority Date:** JULY 1, 1901

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 282.74 GPM

**\*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:** 89.00

**Source Name:** NORTH POLE 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		NENENE	16	8N	1W	BROADWATER

**Period of Diversion:** APRIL 1 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** BISBY DITCH

**Period of Use:** APRIL 1 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	1.00		SENESE	3	8N	1W	BROADWATER
2	25.50		SESE	3	8N	1W	BROADWATER
3	33.00		SWSE	3	8N	1W	BROADWATER
4	8.00		NENE	10	8N	1W	BROADWATER
5	21.50		NWNE	10	8N	1W	BROADWATER

**Total:** 89.00

**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.

10377-00

10380-00

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

**Water Right Number:** 411 30130556 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JDB FAMILY TRUST  
% DOUGLAS B & JOANNE BAUM TRUSTEES  
52 FILSON RD  
WINSTON, MT 59647-8400

**Priority Date:** JUNE 10, 1890

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**\*Source Name:** ANTELOPE CREEK

**Source Type:** SURFACE WATER

**\*Source Name:** UNNAMED TRIBUTARY OF STAUBACH CREEK

**Source Type:** SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF ANTELOPE CREEK.

**\*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		N2NW	26	9N	1W	BROADWATER

**Source Name:** ANTELOPE CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NESWNW	26	9N	1W	BROADWATER
---	--	--------	----	----	----	------------

**\*Source Name:** ANTELOPE CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		SESW	26	9N	1W	BROADWATER
---	--	------	----	----	----	------------

**\*Source Name:** UNNAMED TRIBUTARY OF STAUBACH CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**\*Place of Use:**

<b><u>ID</u></b>	<b><u>Acres</u></b>	<b><u>Govt Lot</u></b>	<b><u>Qtr Sec</u></b>	<b><u>Sec</u></b>	<b><u>Twp</u></b>	<b><u>Rge</u></b>	<b><u>County</u></b>
1			N2NW	26	9N	1W	BROADWATER
2			NESWNW	26	9N	1W	BROADWATER
3			SESW	26	9N	1W	BROADWATER