

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**

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CLAIMANTS: Raymond C. Baum; Barbara L. Baum

**CASE 41I-2030-R-2024**

41I 89122-00

41I 89123-00

41I 185981-00

**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**

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 claims into case 41I-2030-R-2024 to address these issues.

On January 29, 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 claims are accurate as decreed, and the remarks would be removed from the claims. On February 14, 2024, Raymond and Barbara Baum filed an emailed response with the Court (“Response”). Doc. 2.00

### FINDINGS OF FACT

1. Water right claims 41I 89123-00, 41I 89122-00 and 41I 185981-00 appeared in the Preliminary Decree as claims to water from Beaver Creek or Antelope Creek for irrigating 96 acres. They received the following substantive issue remarks:

THE BROADWATER COUNTY WATER RESOURCES SURVEY ( 1956 ) APPEARS TO INDICATE 80.00 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.

The DNRC’s verification of the claims and notes from an August 25, 1989 interview with Charles G. Baum in the claim files support the historical beneficial use of the full 96 acres. The Baums’ Response states that “[t]he 96 acres in the Preliminary Decree are Correct ...” Doc. 2.00. The maximum acres of these claims are accurate as decreed.

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

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

41I 89122-00:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A BRFILED APROPRIATION ON ANTELOPE CREEK WITH A PRIORITY DATE PREDATING CASE NO 253, 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 89123-00 and 41I 185981-00:

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.

### 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 issues raised by the substantive issue remarks are resolved. 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:**

Raymond C. Baum

Barbara L. Baum

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