Montana Water Court PO Box 1389 Bozeman, MT 59771-1389 1-800-624-3270 (406) 586-4364 watercourt@mt.gov FILEED 04/11/2024 Sara Calkins CLERK Montana Water Court STATE OF MONTANA By: <u>D'Ann CIGLER</u> 411-2030-R-2024 Ostrem, Eyvind 3.00

### IN THE WATER COURT OF THE STATE OF MONTANA UPPER MISSOURI DIVISION MISSOURI RIVER ABOVE HOLTER DAM BASIN (411) PRELIMINARY DECREE

#### \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

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. <u>Please review this report carefully.</u>

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 411 89123-00, 411 89122-00 and 411 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):

<sup>&</sup>lt;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.

Electronically Signed By: Hon. Judge Eyvind Ostrem Thu, Apr 11 2024 09:49:59 AM

*Service via USPS Mail:* Raymond C. Baum Barbara L. Baum 50 Cox Lane Winston, MT 59647-8507

# POST DECREE ABSTRACT OF WATER RIGHT CLAIM MISSOURI RIVER, ABOVE HOLTER DAM BASIN 411

			. –					
Water Right Number:	411 89122-	00 STATEMENT C	OF CLAI	Μ				
	Version:	3 POST DECRE	E					
		Status: ACTIVE						
Owners:	BARBARA L BAUM 50 COX LN WINSTON, MT 59647-8507							
	50 COX LN	RAYMOND C BAUM 50 COX LN WINSTON, MT 59647-8507						
Priority Date:	JUNE 5, 18	38						
Type of Historical Right:	FILED	FILED						
Purpose (Use):	IRRIGATIO	N						
Irrigation Type:	FLOOD							
Flow Rate:	1.50 CFS							
*Volume:		THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.						
Climatic Area:	3 - MODER	3 - MODERATE						
Maximum Acres:	96.00	96.00						
Source Name:	ANTELOPE	ANTELOPE CREEK						
Source Type:	SURF/	SURFACE WATER						
Point of Diversion and Me	ans of Diversion:							
ID	Govt Lot		<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	County		
1		SWNWNE	26	9N	1W	BROADWATER		
Period of Diversion:		DCTOBER 31						
Diversion Means:	HEADGATE							
Ditch Name:	BAUM DITC							
Period of Use:	MAY 1 TO 0	DCTOBER 31						
Place of Use:	~ -		~	_	_			
1 96	<u>res</u> <u>Govt Lot</u> .00 .00	<u>Qtr Sec</u> NE	<u>Sec</u> 26	<u>Twp</u> 9N	<u>Rge</u> 1W	<u>County</u> BROADWATER		

#### **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.

## POST DECREE ABSTRACT OF WATER RIGHT CLAIM MISSOURI RIVER, ABOVE HOLTER DAM BASIN 411

Water Right Number:	411 89123-	00 STATEMENT C	F CLAI	М					
	Version:	3 POST DECRE	POST DECREE						
		Status: ACTIVE							
Owners:	50 COX LN	BARBARA L BAUM 50 COX LN WINSTON, MT 59647-8507							
	50 COX LN	RAYMOND C BAUM 50 COX LN WINSTON, MT 59647-8507							
Priority Date:	MAY 24, 19	MAY 24, 1901							
Type of Historical Right:	DECREED	DECREED							
Purpose (Use):	IRRIGATIO	IRRIGATION							
Irrigation Type:	FLOOD								
Flow Rate:	282.74 GPN	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 - MODER	3 - MODERATE							
Maximum Acres:	96.00	96.00							
Source Name:	BEAVER C	BEAVER CREEK							
Source Type:	SURF	SURFACE WATER							
*Point of Diversion and M	eans of Diversion								
<u>ID</u> 1	<u>Govt Lo</u>	t <u>Qtr Sec</u> SWSWSW	<u>Sec</u> 1	<u>Twp</u> 8N	<u>Rge</u> 1W	<u>County</u> BROADWATER			
Period of Diversion:	MAY 1 TO	MAY 1 TO SEPTEMBER 30							
<b>Diversion Means:</b>	HEADGATE	Ξ							
Ditch Name:	BAUM DITCH								
Period of Use:	MAY 1 TO	MAY 1 TO SEPTEMBER 30							
Place of Use:									
1 9	<u>Acres</u> <u>Govt Lo</u> 6.00 6.00	<u>t Qtr Sec</u> NE	<u>Sec</u> 26	<u>Twp</u> 9N	<u>Rge</u> 1W	<u>County</u> BROADWATER			

#### **Remarks:**

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#### **POST DECREE ABSTRACT OF WATER RIGHT CLAIM MISSOURI RIVER, ABOVE HOLTER DAM BASIN 41I** Water Right Number: 41I 185981-00 STATEMENT OF CLAIM Version: 3 -- POST DECREE Status: ACTIVE **Owners: BARBARA L BAUM** 50 COX LN WINSTON, MT 59647-8507 **RAYMOND C BAUM** 50 COX LN WINSTON, MT 59647-8507 **Priority Date: JANUARY 9, 1904 Type of Historical Right:** DECREED **Purpose (Use):** IRRIGATION FLOOD **Irrigation Type:** Flow Rate: 1.25 CFS THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT **\*Volume:** TO HISTORICAL AND BENEFICIAL USE. **Climatic Area:** 3 - MODERATE **Maximum Acres:** 96.00 Source Name: **BEAVER CREEK** Source Type: SURFACE WATER \*Point of Diversion and Means of Diversion: Govt Lot Rge County <u>Qtr Sec</u> Sec Twp SWSWSW 1 8N 1W BROADWATER **Period of Diversion:** MAY 1 TO SEPTEMBER 30 **Diversion Means:** HEADGATE **Ditch Name: BAUM DITCH** Period of Use: MAY 1 TO SEPTEMBER 30 Place of Use:

<u>ID</u>		<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	Sec	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		96.00		NE	26	9N	1W	BROADWATER	
	Total:	96.00							

#### **Remarks:**

ID

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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.