

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

\* \* \* \* \*

CLAIMANTS: Charles R. Masolo; Masolo Ranch; Gay A. Masole; **Masolo Family Trust**

OBJECTOR: John Masolo

**CASE 41I-2014-R-2023**

41I 2749-00

41I 110672-00

41I 110673-00

41I 110674-00

41I 110675-00

**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. Each claim received issue remarks from the Department of Natural Resources and Conservation

(“DNRC”) raising potential legal or factual issues with the claim. Claim 41I 2749-00 also received a late objection from John Masolo. The Water Court consolidated the claims into case 41I-2014-R-2023 to address these issues.

The Court ordered the Claimants to work with the DNRC to resolve the issue remarks on the claims, and on March 20, 2024, DNRC Water Resource Specialist Jason Larsen filed a Memorandum with the Court (“DNRC Memo”). Doc. 5.00.<sup>1</sup> The DNRC Memo makes recommendations as to how to resolve the issue remarks based on Mr. Larsen’s review of the claim files, aerial photos, cadastral information, and historical decrees. The Court twice requested that the Claimants review the DNRC Memo and inform the Court if they disagreed with Mr. Larsen’s recommendations. Docs 6.00 and 7.00. The Court informed the Claimants that if nothing were filed, the Court would conclude the Claimants agree with the DNRC Memo’s recommendations. The Claimants did not respond to the Orders. On May 13, 2024, John Masolo filed a statement withdrawing his late objection in this case. Doc. 8.00.

### FINDINGS OF FACT

#### 41I 2749-00:

1. Claim 41I 2749-00 appeared in the Preliminary Decree with the following substantive issue remark:

A LATE OBJECTION HAS BEEN FILED TO THE MAXIMUM ACRES AND PLACE OF USE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

This remark was placed in reference to John Masolo’s late objection. Mr. Masolo’s late objection is withdrawn.

#### 41I 110672-00, 41I 110673-00, 41I 110674-00, and 41I 110675-00:

2. Claims 41I 110672-00, 41I 110673-00, 41I 110674-00, and 41I 110675-00 received the following substantive issue remark.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE ARE QUESTIONABLE. THIS RIGHT IS BASED ON CASE NO. 73, SPOKANE CREEK, JEFFERSON COUNTY, DATED 4/12/1892. HOWEVER, CASE NO. 2187, SPOKANE CREEK, LEWIS AND CLARK COUNTY, DATED 7/2/1895, NULLIFIED THIS RIGHT.

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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.

The DNRC memo recommends removal of this remark because Case No. 2187 did not nullify this right, and instead simply recognized rights of a downstream senior appropriator. It appears the remark was placed in error.

3. Claims 41I 110673-00, 41I 110674-00, and 41I 110675-00 also received the following substantive remarks:

THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

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

The DNRC Memo states that Mr. Larsen mapped the acres historically irrigated by these claims based on 1947 USDA aerial imagery. Consistent with Mr. Larsen's map and recommendations, the following corrections should be made to claims 41I 110673-00, 41I 110674-00, and 41I 110675-00:

**Maximum Acres: 355.00 325.00**

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	<u>35.00</u> <b><u>29.50</u></b>		SE	20	9N	1W	Broadwater
2	<u>10.00</u> <b><u>58.80</u></b>		<u>SWNW</u> <b>W2</b>	21	9N	1W	Broadwater
3	<u>62.00</u>		<u>SW</u>	21	9N	1W	Broadwater
4	<u>33.00</u> <b><u>32.50</u></b>		NW	28	9N	1W	Broadwater
5	<u>115.00</u> <b><u>204.20</u></b>		NE	29	9N	1W	Broadwater
6	<u>5.00</u>		<u>SENW</u>	<u>29</u>	<u>9N</u>	<u>1W</u>	<u>Broadwater</u>
7	<u>40.00</u>		SE	<u>29</u>	<u>9N</u>	<u>1W</u>	<u>Broadwater</u>
8	<u>55.00</u>		SW	<u>29</u>	<u>9N</u>	<u>1W</u>	<u>Broadwater</u>

The DNRC Memo recommends that the flow rate issue remark be removed because the claims are based on a historical decree. These water rights do not include a "maximum combined acres" and therefore no action is necessary in response to the maximum combined acres remark.

## 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 Findings of Fact above are supported by a preponderance of the evidence. The claims should be modified as described above.

2. The late objection remark on claim 41I 2749-00 is resolved by John Masolo's withdrawal of his objection. The type of historical right and priority date remark on each claim and the maximum combined acres issue remark on claims 41I 110673-00, 41I 110674-00, and 41I 110675-00 fail to overcome the *prima facie* claims. The remaining issue remarks are resolved by the modifications described above and information in the DNRC memo. 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 make the changes specified in the Findings of Fact above and 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**

Charles R Masolo  
**Masolo Family Trust**  
~~Gay A Masolo~~  
20 Buck Dr  
Townsend, MT 59644

Masolo Ranch  
% John Masolo  
242 Beaver Creek Rd  
Winston, MT 59647

John Masolo  
242 Beaver Creek Rd  
Winston, MT 59647

**Notice: Caption & Service List Updated 8.13.24**

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

**Water Right Number:** **41I 2749-00** STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
CHARLES R MASOLO  
20 BUCK DR  
TOWNSEND, MT 59644-9651  
  
MASOLO RANCH  
% JOHN MASOLO  
242 BEAVER CREEK RD  
WINSTON, MT 59647-8302

**Priority Date:** OCTOBER 31, 1921

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 170.00 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:** 10.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BEAVER CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		SWNWSW	29	9N	1E	BROADWATER

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

**Diversion Means:** HEADGATE

**Ditch Name:** DAVIES DITCH

**Period of Use:** APRIL 15 TO OCTOBER 15

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	10.00		NWSW	29	9N	1E	BROADWATER
<b>Total:</b>	10.00						

**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.

2741-00

2749-00

2751-00

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

**Water Right Number:** 41I 110672-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MASOLO FAMILY TRUST  
20 BUCK DR  
TOWNSEND, MT 59644-9651

**Priority Date:** APRIL 1, 1881

**Type of Historical Right:** DECREED

**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:** SPOKANE CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2SW	21	9N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO DECEMBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		NWNW	28	9N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO DECEMBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		NE	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO DECEMBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		NWSE	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO DECEMBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		SW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO DECEMBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b>	APRIL 15 TO DECEMBER 15					

**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			W2SW	21	9N	1W	BROADWATER
2			NWNW	28	9N	1W	BROADWATER
3			NE	29	9N	1W	BROADWATER
4			NWSE	29	9N	1W	BROADWATER
5			SW	29	9N	1W	BROADWATER

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

110672-00

110673-00

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

**Water Right Number:** 41I 110673-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MASOLO FAMILY TRUST  
20 BUCK DR  
TOWNSEND, MT 59644-9651

**Priority Date:** APRIL 1, 1881

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.00 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:** 325.00

**Source Name:** SPOKANE 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		NWSWSW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
2		NWNESW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
3		NENESW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
<b>Period of Use:</b>		APRIL 15 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	29.50		SE	20	9N	1W	BROADWATER
2	58.80		W2	21	9N	1W	BROADWATER
3	32.50		NW	28	9N	1W	BROADWATER
4	204.20			29	9N	1W	BROADWATER
<b>Total:</b>		325.00					

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**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.

110673-00        110674-00        110675-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

110672-00        110673-00

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

**Water Right Number:** 41I 110674-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MASOLO FAMILY TRUST  
20 BUCK DR  
TOWNSEND, MT 59644-9651

**Priority Date:** MAY 15, 1881

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.00 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:** 325.00

**Source Name:** SPOKANE 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		NWSWSW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
2		NWNESW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
3		NENESW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
<b>Period of Use:</b>		APRIL 15 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	29.50		SE	20	9N	1W	BROADWATER
2	58.80		W2	21	9N	1W	BROADWATER
3	32.50		NW	28	9N	1W	BROADWATER
4	204.20			29	9N	1W	BROADWATER
<b>Total:</b>		325.00					

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**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.

110673-00

110674-00

110675-00

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

**Water Right Number:** 41I 110675-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MASOLO FAMILY TRUST  
20 BUCK DR  
TOWNSEND, MT 59644-9651

**Priority Date:** MAY 15, 1882

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.00 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:** 325.00

**Source Name:** SPOKANE 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		NWSWSW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
2		NWNESW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
3		NENESW	29	9N	1W	BROADWATER
<b>Period of Diversion:</b>		APRIL 15 TO OCTOBER 15				
<b>Diversion Means:</b>		HEADGATE				
<b>Period of Use:</b>		APRIL 15 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	29.50		SE	20	9N	1W	BROADWATER
2	58.80		W2	21	9N	1W	BROADWATER
3	32.50		NW	28	9N	1W	BROADWATER
4	204.20			29	9N	1W	BROADWATER
<b>Total:</b>		325.00					

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**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.

110673-00

110674-00

110675-00