

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: John P. Smith Living Trust; Miriam E. Yoder;
William J. Yoder

CASE 41I-2053-R-2024
41I 6753-00

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 6753-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim did not receive objections but received an issue remark from the Department of Natural Resources and Conservation (DNRC) raising potential legal or factual issues with the claim. Claim 41I 6753-00 is consolidated into Water Court Case 41I-2053-R-2024 to address the remark.

FINDINGS OF FACT

1. Claim 41I 6753-00 is an irrigation claim to 4.00 CFS of Crow Creek water based on a decreed right in Case 236, Broadwater County. It appeared in the Preliminary Decree with the following issue remark.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 22.00 GPM PER ACRE

This issue remark is based solely on DNRC guidelines, not facts specific to the claimed water right.

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 issue remark fails to overcome the prima facie status of the Statement of Claim, and should be removed from the claim.

RECOMMENDATIONS

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

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

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

John P Smith Living Trust
150 Smith Ln
Toston, MT 59643

Miriam E Yoder
William J Yoder
49 Smith Ln
Toston, MT 59643

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

Water Right Number: 411 6753-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MIRIAM E YODER
49 SMITH LN
TOSTON, MT 59643-9771

WILLIAM J YODER
49 SMITH LN
TOSTON, MT 59643-9771

SMITH, JOHN P LIVING TRUST
150 SMITH LN
TOSTON, MT 59643-9757

Priority Date: MAY 1, 1878

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: 80.00

Source Name: CROW CREEK

Source Type: SURFACE WATER

HISTORICALLY THIS CREEK WAS KNOWN AS LOWER CROW CREEK, THEN CROW CREEK AND TODAY IS CALLED WARMS SPRINGS 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		NENSW	21	5N	2E	BROADWATER

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: SMITH DITCH

Period of Use: MAY 1 TO OCTOBER 1

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	40.00		NENE	21	5N	2E	BROADWATER
2	40.00		NWNE	21	5N	2E	BROADWATER

Total: 80.00