

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: Gordon Sanderson; Shirley Sanderson

CASE 41I-2044-R-2024

41I 2223-00

41I 2233-00

41I 2236-00

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-2044-R-2024 to address the remarks.

FINDINGS OF FACT

Claim 41I 2223-00:

1. Claim 41I 2223-00 received the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE FORM GW2, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, IS 03/16/1967.

The Court requested that the claimants inform the Court if a Notice of Appropriation was filed pursuant to the 1961 Groundwater Code. The Court stated that if the claimants did not respond, the Court would conclude no Notice of Appropriation was filed and the claimants agree the priority date should be corrected as recommended by the issue remark. Nothing was filed, and the following correction should be made:

Priority Date: ~~January 20, 1967~~

March 16, 1967

Claims 41I 2233-00 and 41I 2236-00:

2. Claims 41I 2233-00 and 41I 2236-00 are irrigation claims to water from Crow Creek that received the following substantive issue 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 elements questioned by these remarks were previously addressed by findings of the Court. *See*, Case 41I-257, Master’s Report dated March 27, 1998 (adopted May 8, 1998); Case 41I-254, Master’s Report dated March 27, 1998 (adopted April 27, 1998).

3. These claims also received the following issue remarks that served only to provide notice to the claimants and other water users in the Preliminary Decree (Notice Only Remarks).

THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE PERIOD OF USE BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

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. 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.

2. 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.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The priority date of claim 41I 2223-00 should be corrected as described above. The substantive issue remark on that claim is resolved by the correction.

2. The remaining substantive issue remarks are resolved by prior findings of the Court; 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 modify the claims as described above and remove the issue remarks from the claims.

Abstracts reflecting the recommended changes are attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Gordon Sanderson
Shirley Sanderson
49 Mt Highway 437
Toston, MT 59643-9736
406-266-3695 C
shirleyjsanderson39@gmail.com

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

Water Right Number: 411 2223-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GORDON SANDERSON
49 MT HIGHWAY 437
TOSTON, MT 59643-9736

SHIRLEY SANDERSON
49 MT HIGHWAY 437
TOSTON, MT 59643-9736

Priority Date: MARCH 16, 1967

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 25.00 GPM

***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: GROUNDWATER

Source Type: GROUNDWATER

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 | | NENWSW | 32 | 6N | 2E | BROADWATER |

Period of Diversion: MARCH 31 TO DECEMBER 31

Diversion Means: WELL

Period of Use: MARCH 31 TO DECEMBER 31

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 | | | NENWSW | 32 | 6N | 2E | BROADWATER |

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

Water Right Number: 411 2233-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHIRLEY SANDERSON
49 MT HIGHWAY 437
TOSTON, MT 59643-9736

Priority Date: MAY 1, 1872

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 2.50 CFS

THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR 2.50 CFS . 411 2233-00, 411 2248-00.

UNDIVIDED 1/2 INTEREST IN A SINGLE WATER RIGHT TO 2.50 CFS. THE CLAIMANTS ROTATE USAGE OF THE FULL FLOW OF 2.50 CFS AS MUTUALLY AGREED.

***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: 320.00

Source Name: CROW 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 | 26 | 5N | 1E | BROADWATER |

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

Diversion Means: HEADGATE

***Period of Use:** 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 | 80.00 | | NW | 25 | 5N | 1E | BROADWATER |
| 2 | 80.00 | | SE | 25 | 5N | 1E | BROADWATER |
| 3 | 160.00 | | SW | 25 | 5N | 1E | BROADWATER |
| Total: | 320.00 | | | | | | |

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.

2233-00

2236-00

2238-00

2240-00

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

Water Right Number: 411 2236-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SHIRLEY SANDERSON
49 MT HIGHWAY 437
TOSTON, MT 59643-9736

Priority Date: MAY 1, 1894

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 336.60 GPM

THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR 0.75 CFS . 411 2236-00, 411 120843-00.

UNDIVIDED 1/2 INTEREST IN A SINGLE WATER RIGHT TO 0.75 CFS. THE CLAIMANTS ROTATE USAGE OF THE FULL FLOW RATE OF 0.75 CFS AS MUTUALLY AGREED.

***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: 320.00

Source Name: CROW 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 | 26 | 5N | 1E | BROADWATER |

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

Diversion Means: HEADGATE

***Period of Use:** 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 | 80.00 | | NW | 25 | 5N | 1E | BROADWATER |
| 2 | 80.00 | | SE | 25 | 5N | 1E | BROADWATER |
| 3 | 160.00 | | SW | 25 | 5N | 1E | BROADWATER |
| Total: | 320.00 | | | | | | |

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.

2233-00

2236-00

2238-00

2240-00