

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: ~~D-D Davis Ranch Co.~~; Three D Ranch Co.

**CASE 41I-0066-R-2023**  
41I 117768-00

**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 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**

Claim 41I 117768-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is co-owned by D D Davis Ranch Co. and Three D Ranch Co. The claim did not receive objections,

counterobjections, or notices of intent to appear, but did receive issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

### FINDINGS OF FACT

1. Claim 41I 117768-00 appeared in the Basin 41I Preliminary Decree as a flood irrigation claim for use on 140.00 acres as follows:

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	100.00		N2	2	5N	2E	BROADWATER
2	40.00		SW	35	6N	2E	BROADWATER
<b>Total:</b>	140.00						

2. The claim received the following issue remarks:

USDA AERIAL PHOTOGRAPH NO(S). 379-182, , DATED 08/28/1979 , APPEARS TO INDICATE 177.25 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.

3. On January 24, 2024, Water Resource Specialist Jason Larsen filed a memorandum. Neither Claimant contacted the DNRC as ordered.

4. On February 12, 2024, R & L Ranch Co., successor-in-interest to D D Davis Ranch Co., filed a withdrawal of interest.

5. Mr. Larsen found support for historical irrigation of 179.38 acres between the two places of use. However, without input from Claimant, Mr. Larsen was unable to determine what modifications, if any, are needed to the place of use.

6. Based on Mr. Larsen’s findings, the Court ordered Claimant Three D Ranch Co. to file evidence supporting any modifications to the place of use. Nothing was filed by the deadline.

7. On June 17, 2024, the Court ordered Claimant Three D Ranch Co. to show cause why the place of use should not remain as it appeared in the Basin 41I Preliminary Decree. The order stated that if nothing was filed by the deadline, the place of use would remain as it appeared in the Basin 41I Preliminary Decree. Nothing was filed by the deadline.

## PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.
7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

## CONCLUSION OF LAW

1. The place of use and maximum acres issue remarks do not overcome the prima facie status of claim 41I 117768-00. Although there is evidence that the historical place of use may be larger than originally claimed, Claimant Three D Ranch Co. failed to provide evidence supporting the historically accurate place of use. Without specific evidence showing which parcels need to be added or expanded on the claim abstract, there is not sufficient evidence to overcome the prima facie status of the originally claimed place of use.

## RECOMMENDATIONS

1. D D Davis Ranch Co. should be removed as an owner of claim 41I 117768-00.
2. The issue remarks should be removed from claim 41I 117768-00.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

D D Davis Ranch Co  
131 Dry Hollow Rd  
Townsend, MT 59644

Three D Ranch Co  
% Darrel D Davis  
379 Flynn Ln  
Townsend, MT 59644

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

**Water Right Number:** 41I 117768-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** THREE D RANCH CO  
% DARREL D DAVIS  
21 DRY HOLLOW RD  
TOWNSEND, MT 59644

**Priority Date:** MAY 31, 1893

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.75 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:** 140.00

**Source Name:** DRY 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		SWNWNE	25	6N	2E	BROADWATER

**Period of Diversion:** APRIL 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** DAVIS DITCH

**Period of Use:** APRIL 1 TO NOVEMBER 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	100.00		N2	2	5N	2E	BROADWATER
2	40.00		SW	35	6N	2E	BROADWATER
<b>Total:</b>	<u>140.00</u>						

**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.

117768-00      117772-00      117773-00