

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**

\*\*\*\*\*

CLAIMANT: Thomas M. Sweeney

**CASE 41I-2015-R-2023**

41I 143058-00

41I 143059-00

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

(“DNRC”) identifying potential legal or factual issues with the water rights. The Water Court consolidated the claims into case 41I-2015-R-2023 to address these issues.

The Water Court ordered the Claimant to meet with the DNRC and attempt to resolve certain issue remarks on claim 41I 143058-00. Claimant Thomas M. Sweeney contacted the DNRC and provided information in response to the remarks. On April 2, 2024, DNRC Water Resource Specialist Jason Larsen filed a memorandum with the Court summarizing the discussions and information received (“DNRC Memo”). The DNRC Memo did not make recommendations to the Court regarding how to resolve the remarks, except that it suggested reducing the period of use of claim 41I 143058-00 to exclude winter months.

### FINDINGS OF FACT

#### 41I 143058-00:

1. Water right claim 41I 143058-00 is a mining claim to surface water from Spokane Creek. It appeared in the Preliminary Decree with the following substantive issue remarks:

THE CLAIMED FLOW RATE CANNOT BE CONFIRMED DUE TO A LACK OF DATA.

AS OF 12/10/2021 , THIS WATER RIGHT APPEARS TO BE OWNED BY CHARLES R AND GAY A MASOLO , 20 BUCK DR , TOWNSEND, MT , 59644-9651.

THE CLAIMED PERIOD OF USE MAY BE QUESTIONABLE. USE OF THIS WATER MAY NOT BE FEASIBLE DURING WINTER MONTHS.

DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT FOR THE TEN CONSECUTIVE YEARS PRIOR TO JULY 1, 1973.

This water right claim was previously addressed by the Water Court following the issuance of the Basin 41I Temporary Preliminary Decree. The flow rate, period of use, and 10-year use (abandonment) issue remarks described above were on the claim at that time. The State of Montana Department of Fish, Wildlife and Parks objected to the volume, flow rate, period of use, and alleged abandonment of the claim following that decree. The parties filed a Stipulation for Withdrawal of Objection in Case 41I-573, and on October 23, 1997, the water master issued a Master’s Report (adopted November 14, 1997), which accepted the Stipulation and included the following conclusions:

II.

The Court has reviewed the Stipulation. As no contrary evidence has been submitted to overcome the prima facie status of the original claim pursuant to §85-2-227, MCA, no changes should be made to this claim.

III.

Water right claim 41I-W-143058-00 shall appear in the Preliminary Decree for the Missouri River Above Holter Dam Basin (41I) with no changes except for the addition of the remark specified in the Findings of Fact.

IV.

Flow rate, volume and period of use do not require change.

Though the Master's Report did not explicitly address and remove the flow rate, period of use, and abandonment issue remarks, the Water Master concluded that no evidence was presented to overcome the prima facie status of the claim – the Water Master did not deem the issue remarks sufficient to overcome the prima facie status of the claim.

The Claimant's response attached to the DNRC Memo confirms that mining took place over the years. The DNRC Memo does not present additional evidence in support of the remarks that was not before the Court in 1997. Therefore, the previous holdings of the Court are sufficient to deem these remarks resolved. The Court declines to adopt the DNRC Memo's recommendation to reduce the period of use in light of the Court's prior conclusions.

The remaining issue remarks also appear on claim 41I 143059-00 and are addressed below.

41I 143059-00:

2. Both claims 41I 143059-00 and 41I 143058-00 appeared in the Preliminary Decree with the following ownership issue remark:

AS OF 12/10/2021 , THIS WATER RIGHT APPEARS TO BE OWNED BY CHARLES R AND GAY A MASOLO , 20 BUCK DR , TOWNSEND, MT , 59644-9651.

In response to the ownership issue remark, the Court provided Charles and Gay Masolo notice and requested that they inform the Court if they claimed an ownership

interest in the claim. The Court informed the Masolos that if nothing were filed, the Court would conclude they did not claim an ownership interest. Order Consolidating Claims and Setting Filing Deadline, November 15, 2023 (Doc. 1.00).<sup>1</sup> Nothing was filed, and the Court concluded the Masolos do not claim an interest in the claims. Order Requiring DNRC Conference, January 4, 2024 (Doc. 2.00).

Both claims also received the following remark that served only to provide notice to the claimants and other water users in the Preliminary Decree (“Notice Only Remark”):

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.

### 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.

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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.

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**

Thomas M Sweeney  
PO Box 8891  
Kodiak, AK 99615

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

**Water Right Number:** 411 143058-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** THOMAS M SWEENEY  
PO BOX 8891  
KODIAK, AK 99615

**Priority Date:** DECEMBER 10, 1899

**Type of Historical Right:** USE

**Purpose (Use):** MINING

**Flow Rate:** 1.00 CFS

**Volume:** THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

**\*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		SWSENE	31	9N	1W	BROADWATER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIVERSION DAM

MEANS OF DIVERSION INCLUDES A SLUICE BOX, BUCKET, OR OTHER CONTAINER.

**Period of Use:** JANUARY 1 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			NESENE	31	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.

143058-00      143059-00

THIS WATER RIGHT CLAIM IS SUBJECT TO A PRIVATE AGREEMENT IN THE 09/26/1997 STIPULATION LOCATED IN THE CLAIM AND CASE FILES

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

**Water Right Number:** 411 143059-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** THOMAS M SWEENEY  
PO BOX 8891  
KODIAK, AK 99615

**Priority Date:** DECEMBER 10, 1899

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 10.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 3

**Maximum Acres:** 1.00

**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		SWSENE	31	9N	1W	BROADWATER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Period of Use:** JANUARY 1 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	1.00		N2S2NE	31	9N	1W	BROADWATER

**Total:** 1.00

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**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.

143058-00      143059-00