

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: Richard D. Anderson; Tora Kober; Arnold J.
Kolberg

CASE 41I-2032-R-2024

41I 24025-00

41I 24026-00

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-2032-R-2024 to address these issues.

FINDINGS OF FACT

1. Claims 41I 24025-00 and 41I 24026-00 are a livestock and a domestic claim, respectively, to surface water pumped from a manmade pit. Each received the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

THE CLAIMED PRIORITY DATE IS QUESTIONABLE BECAUSE NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM. THIS CLAIM APPEARS TO BE REDUNDANT WITH WATER RIGHT NO. 41I C33268-00.

The flow rate of the claims is supported by evidence of the pump capacity and other statements in the claim file. Documentation for these surface water claims was not required by the 1961 Groundwater Code, and as surface water rights, they are not redundant with groundwater certificate 41I 33268-00. The Claimants agree these claims are not redundant. Doc. 5.00.¹ The issue remarks should be removed from the claims.

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.

¹ "Doc." refers to the docket number of a document filed in the Water Court's Full Court Enterprise Case Management system.

CONCLUSIONS OF LAW

1. The issue remarks fail to overcome the prima facie status of the Statements of Claim.

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.

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

Richard D Anderson
63 Hossfeld Ln
Toston, MT 59643

Tora Kober
75 Hossfeld Ln
Toston, MT 59643

Arnold J Kolberg
66 Lone Mountain Rd
Toston, MT 59643

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

Water Right Number: 411 24025-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RICHARD D ANDERSON
63 HOSSFELD LN
TOSTON, MT 59643-9739

TORA KOBER
75 HOSSFELD LN
TOSTON, MT 59643-9739

ARNOLD J KOLBERG
66 LONE MOUNTAIN RD
TOSTON, MT 59643-9745

Priority Date: JANUARY 1, 1969

Type of Historical Right: USE

Purpose (Use): STOCK
DAIRY AND HOG FEEDLOT

Flow Rate: 90.00 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: MANMADE PIT, UNNAMED TRIBUTARY OF WARM SPRINGS 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		NWNWSW	5	4N	2E	BROADWATER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

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			NWNWSW	5	4N	2E	BROADWATER
2			SWNWSW	5	4N	2E	BROADWATER
3			SWSESW	5	4N	2E	BROADWATER
4			SWSWSW	5	4N	2E	BROADWATER

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME RESERVOIR.

24025-00 24026-00 33266-00 33267-00 33268-00

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.

24025-00 24026-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME PIT. 411 24024-00, 411 24025-00, 411 24026-00, 411 K033266-00, 411 C033267-00, 411 C033268-00.

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

Water Right Number: 41I 24026-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TORA KOBER
75 HOSSFELD LN
TOSTON, MT 59643-9739

ARNOLD J KOLBERG
66 LONE MOUNTAIN RD
TOSTON, MT 59643-9745

Priority Date: JANUARY 1, 1969

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 90.00 GPM

Volume: 6.00 AC-FT

Households: 2

Maximum Acres: 2.00

Source Name: MANMADE PIT, UNNAMED TRIBUTARY OF WARM SPRINGS 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		NWNWSW	5	4N	2E	BROADWATER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

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		SWNWSW	5	4N	2E	BROADWATER
2	1.00		SWSESW	5	4N	2E	BROADWATER

Total: 2.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME RESERVOIR.

24025-00 24026-00 33266-00 33267-00 33268-00

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.

24025-00 24026-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME PIT. 41I 24024-00, 41I 24025-00, 41I 24026-00, 41I K033266-00, 41I C033267-00, 41I C033268-00.