

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**

* * * * *

CLAIMANT: Ferrat Ranch LLC

CASE 41I-0010-R-2023

41I 46163-00

41I 46164-00

41I 46165-00

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

The above-captioned claims appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claims received issue

remarks during the DNRC's claims reexamination. 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 46163-00 appeared in the Basin 41I Preliminary Decree as a claim for flood irrigation. The claim was decreed with two points of diversion (both headgates) and a 465.00-acre place of use.

2. Claim 41I 46165-00 appeared in the Basin 41I Preliminary Decree as a claim for flood irrigation with a 150.00-acre place of use.

3. Claim 41I 46164-00 appeared in the Basin 41I Preliminary Decree as a claim for natural subirrigation of 720.00 acres, which overlaps the places of use for claims 41I 46163-00 and 41I 46165-00.

Place of Use/Maximum Acres Issue Remarks

4. Claims 41I 46163-00 and 41I 46165-00 received the following issue remarks:

41I 46163-00

THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 308.00 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.

41I 46165-00

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

5. The United States Bureau of Reclamation (BOR) objected to claims 41I 46163-00 and 41I 46165-00 during adjudication of the Basin 41I Temporary Preliminary Decree (TPD). BOR objected to the claim based on place of use/maximum acres and flow rate. BOR's objection stated:

The Bureau of Reclamation claims water rights in the Missouri River Basin, including Basin 41I. The Temporary Preliminary Decree reflects an irrigated acreage greater than the acreage that has historically been irrigated by this claimed water right (as determined by the Montana Department of Natural Resources and Conservation and a review of the County Water Resources Surveys,). The claimed flow rate may need to be changed to account for any change in claimed acres.

6. The claims were consolidated into Case 41I-287 to resolve the BOR's objections.

7. On March 19, 1998, then-claimants Maurice and Lucia Ferrat filed an affidavit supporting the historical use of both claims.

8. Based on the affidavit, BOR conditionally withdrew their objections to the claims.

9. Based on the affidavit and conditional withdrawal, the Water Court added a limiting information remark to the claims as follows:

THE PARTIES TO THE UNDIVIDED INTEREST USE THE FULL FLOW RATE OF 8.50 CFS ON A ROTATING BASIS AS MUTUALLY AGREED IN A STIPULATION FILED 4/17/98 LOCATED IN CASE FILE 41I-287.

10. The Water Master maintained the place of use and maximum acres of each claim.

11. The Master's Report was adopted by the Water Judge on April 28, 1999.

12. Claims 41I 46163-00 and 41I 46165-00 appeared in the Basin 41I Preliminary Decree and were consolidated in this matter to resolve the issue remarks described in Finding of Fact No. 4.

13. The Court ordered Claimant Ferrat Ranch LLC (via John Ferrat) worked with the DNRC to discuss resolution of the issue remarks.

14. DNRC Water Resource Specialist Jason Larsen filed a memorandum. (Doc.¹ 2.00).

15. After comparing the available maps for the places of use – both the Water Resources Survey maps and 1979 aerial photographs - Mr. Larsen was able to verify the claimed acreage and recommends maintaining the place of use and maximum acres as they appeared in the Basin 41I Preliminary Decree.

Means of Diversion Issue Remark

16. Claim 41I 46163-00 also received the following issue remark:

THE MEANS OF DIVERSION FOR POINT OF DIVERSION NO. 1 APPEARS INCORRECT. THE MEANS OF DIVERSION OF THE POINT OF DIVERSION APPEARS TO BE DITCH.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

17. Mr. Ferrat and Mr. Larsen agree that the means of diversion for the point of diversion in the SENWSE of Section 26, T5N, R1E, Broadwater County is a ditch.

Notice-Type Issue Remarks

18. The claims received notice-type issue remarks as follows:

41I 46163-00

POINT OF DIVERSION, MEANS OF DIVERSION AND SOURCE NAME WERE 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.

41I 46164-00

SOURCE NAME 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.

19. The issue remarks identify elements modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remarks indicate that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remarks will be removed. None of the claims received objections.

20. Claims 41I 46164-00 and 41I 46165-00 received the following notice-type issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON MARSH CREEK WITH A PRIORITY DATE PREDATING CASE NO 236, BROADWATER COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

21. This remark served its notice purpose.

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.

CONCLUSIONS OF LAW

41I 46163-00 and 41I 46165-00

1. The place of use/maximum acres and flow rate issue remarks do not overcome the prima facie status of claims 41I 46163-00 and 41I 46165-00. The flow rate was established in Case 41I-287, and the evidence provided in the memorandum shows the place of use/maximum acres of both claims are historically accurate. Therefore, the remarks should be removed from the claim abstracts and the place of use/maximum acres for each claim should remain as they appeared in the Basin 41I Preliminary Decree.

2. The means of diversion issue remark overcomes the prima facie status of claim 41I 46163-00. The evidence in the claim and case files shows the historically accurate means of diversion for the point of diversion in the SENWSE of Section 26, T5N, R1E, Broadwater County is a ditch.

Notice-Type Issue Remarks

3. Each remark in Finding of Fact No. 18 provides notice of the changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remarks do not raise unresolved issues that need to be addressed. No proceedings are required to resolve the remarks; the remarks should be removed from the abstracts.

4. The notice-type priority date remark served its notice purpose.

RECOMMENDATIONS

1. On claim 41I 46163-00, the means of diversion for the point of diversion in the SENWSE of Section 26, T5N, R1E, Broadwater County should be modified to ditch.

2. The issue remarks should be removed from the claim abstracts.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Ferrat Ranch LLC

191 Ferrat Ln

Toston, MT 59343

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

Water Right Number: 411 46163-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FERRAT RANCH LLC
191 FERRAT LN
TOSTON, MT 59643-9732

Priority Date: MAY 1, 1872

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 8.50 CFS

THE PARTIES TO THE UNDIVIDED INTEREST USE THE FULL FLOW OF 8.50 CFS ON A ROTATING BASIS AS MUTUALLY AGREED IN A STIPULATION FILED 4/17/1998 LOCATED IN CASE FILE 411-287.

THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR 8.50 CFS . 411 3395-00, 411 3793-00, 411 15243-00, 411 36148-00, 411 46163-00.

UNDIVIDED 3/10 INTEREST IN A SINGLE WATER RIGHT FOR 8.50 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: 465.00

***Source Name:** WILLOW SWAMP

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		SENWSE	26	5N	1E	BROADWATER

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: DITCH

Ditch Name: WILLOW SWAMP CANAL

2 - SECONDARY		NESWNE	31	5N	2E	BROADWATER
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Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 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	150.00		SW	29	5N	2E	BROADWATER
2	105.00		SE	30	5N	2E	BROADWATER
3	80.00		N2NE	31	5N	2E	BROADWATER

4	<u>130.00</u>	NW	32	5N	2E	BROADWATER
Total:	465.00					

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.

46163-00 46164-00 46165-00

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

Water Right Number: 411 46164-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FERRAT RANCH LLC
191 FERRAT LN
TOSTON, MT 59643-9732

Priority Date: DECEMBER 31, 1870

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: NATURAL SUBIRRIGATION

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

***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: 720.00

***Source Name:** SUBIRRIGATION, UNNAMED TRIBUTARY OF MARSH CREEK

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		SW	29	5N	2E	BROADWATER
Period of Diversion:		APRIL 1 TO NOVEMBER 1				
Diversion Means:		SUBIRRIGATION				
2		SE	30	5N	2E	BROADWATER
Period of Diversion:		APRIL 1 TO NOVEMBER 1				
Diversion Means:		SUBIRRIGATION				
3		W2	32	5N	2E	BROADWATER
Period of Diversion:		APRIL 1 TO NOVEMBER 1				
Diversion Means:		SUBIRRIGATION				
4		N2NE	31	5N	2E	BROADWATER
Period of Diversion:		APRIL 1 TO NOVEMBER 1				
Diversion Means:		SUBIRRIGATION				

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	160.00		SW	29	5N	2E	BROADWATER
2	160.00		SE	30	5N	2E	BROADWATER
3	80.00		N2NE	31	5N	2E	BROADWATER

4	<u>320.00</u>	W2	32	5N	2E	BROADWATER
Total:	720.00					

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.

46163-00 46164-00 46165-00

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

Water Right Number: 411 46165-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FERRAT RANCH LLC
191 FERRAT LN
TOSTON, MT 59643-9732

Priority Date: MAY 21, 1903

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 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: 150.00

***Source Name:** WASTE & SEEPAGE, 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		SWSWSW	32	5N	2E	BROADWATER

Period of Diversion: MARCH 1 TO JULY 31

Diversion Means: DAM

A DAM IS USED TO DIVERT WASTE WATER COLLECTED IN A CULVERT UNDER A ROAD AT THE POINT OF DIVERSION.

Period of Use: MARCH 1 TO JULY 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	25.00		S2NW	32	5N	2E	BROADWATER
2	15.00		NESW	32	5N	2E	BROADWATER
3	40.00		NWSW	32	5N	2E	BROADWATER
4	35.00		SESW	32	5N	2E	BROADWATER
5	35.00		SWSW	32	5N	2E	BROADWATER

Total: 150.00

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.

46163-00

46164-00

46165-00