

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: Alice C. Rieder

OBJECTORS: Frank W. McArthur Jr.; Leisa N. McArthur

CASE 41I-0017-R-2023
41I 7075-00

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 7075-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received an objection from Frank and Leisa McArthur. The claim also received an issue remark. 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 7075-00 appeared in the Basin 41I Preliminary Decree as a claim for sprinkler/flood irrigation that diverts water from Deep Creek via a headgate on Mitchell-Heuer Ditch 2 in the SESESW of Section 36, T7N, R2E, Broadwater County.
2. The McArthurs objected, stating the point of diversion is in question.
3. The claim also received an issue remark stating that the point of diversion was modified by the DNRC during reexamination of the claim.
4. The parties filed a settlement agreement. (Docs.¹ 7.00, 8.00).
5. The settlement agreement requested the following modifications to claim 41I 7075-00:

*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	NENESW	SESESW	36	7N	2E	BROADWATER
Period of Diversion: APRIL 1 TO OCTOBER 15 2 6N						
Diversión Means: HEADGATE Pump						
Ditch Name: MITCHELL HEUER DITCH 2						
PUMP IS SECONDARY MEANS OF DIVERSION.						

6. The Statement of Claim listed the point of diversion and means of diversion as follows:

6. Point of Diversion: County Broadwater
NE 1/4 NE 1/4 SW 1/4, Section 2, T 6 N/S, R 2 E/W
 Lot _____, Block _____, Subdivision _____

7. Means of Diversion:
 Pump Capacity 1000 gpm
 Headgate and ditch or pipe
 Flood and dike

7. The point of diversion and means of diversion were amended by Claimant prior to issuance of the Basin 41I Temporary Preliminary Decree. No evidence was provided in support of the amendment.

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

8. The map attached to the statement of claim shows the point of diversion in Section 2, T6N, R2E, Broadwater County:



9. The modifications proposed in the settlement agreement restore the point of diversion and means of diversion to how they were originally claimed.

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. The Water Court is not bound by parties’ settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

CONCLUSION OF LAW

1. The objection overcomes the prima facie status of claim 40A 7075-00. The evidence in the claim file shows the point of diversion is a pump in the NENESW of Section 2, T6N, R2E, Broadwater County. Modification of the point of diversion and means of diversion resolves the objection and the point of diversion issue remark.

RECOMMENDATIONS

1. Claim 41I 7075-00 should be modified as follows:

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NENESW	SE	SE	SW	36	7N	2E BROADWATER
Period of Diversion: APRIL 1 TO OCTOBER 15 2 6N							
Diversion Means: HEADGATE Pump							
Ditch Name: MITCHELL HEUER DITCH 2							
PUMP IS SECONDARY MEANS OF DIVERSION.							

2. The issue remark should be removed from claim 41I 7075-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Alice C Rieder
PO Box 581
Boulder, MT 59632

Frank W McArthur Jr
Leisa N McArthur
574 Lower Deep Creek Rd
Townsend, MT 59644

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

Water Right Number: 411 7075-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ALICE C RIEDER
PO BOX 581
BOULDER, MT 59632-0581

Priority Date: MAY 31, 1871

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.50 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:** 100.20

Source Name: DEEP 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		NENESW	2	6N	2E	BROADWATER

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: PUMP

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	15.00		SWNE	2	6N	2E	BROADWATER
2	52.80		SE	2	6N	2E	BROADWATER
3	32.40		SW	2	6N	2E	BROADWATER

Total: 100.20

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.

7070-00 7074-00 7075-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

815-00 7075-00