

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: Darcy Anderson; Michael J. Anderson; Spur DM
Cattle Company LLC

CASE 41I-0041-R-2023
41I 30894-00
41I 30896-00

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 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

41I 30894-00

1. Claim 41I 30894-00 appeared in the Basin 41I Preliminary Decree as a domestic claim for a well in the NWNWNE of Section 21, T6N, R2E, Broadwater County.

2. The claim was decreed with a flow rate of 200.00 GPM and a volume of 322.60 AC-FT. The claim received the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A FLOW RATE OF 16 GPM.
THE CLAIMED VOLUME EXCEEDS THE 8.00 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

3. On November 3, 2023, the Court ordered Claimants to work with the DNRC to resolve the issue remarks on claims 41I 30894-00 and 41I 30896-00.

4. On February 5, 2024, Water Resource Specialist Jason Larsen filed a memorandum. Mr. Larsen stated that Claimants failed to contact the DNRC as ordered. (Doc.¹ 2.00).

5. According to Mr. Larsen, the 322.60-acre-foot volume appears to come from multiplying the 200.00 GPM flow rate by the number of minutes in a year. Based on his review of the claim file, Mr. Larsen agrees with the DNRC examiner who placed the issue remark on the claim, that a reasonable volume for two households with two acres of lawn and garden is 8.00 acre-feet.

6. Mr. Larsen also found that based on the information in the claim file, the claimed flow rate of 200.00 GPM is reasonable.

7. On April 3, 2024, Claimants filed a statement agreeing with Mr. Larsen's recommended reduction of the volume to 8.00 AC-FT. (Doc. 5.00).

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8. Claim 41I 30896-00 appeared in the Basin 41I Preliminary Decree as an irrigation claim with a period of diversion and period of use from March 1 to November 30. The claim received the following issue remark:

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

9. April 15 to October 15 is the usual growing season for climatic area III. Mr. Larsen was unable to find any evidence or other information supporting the extended period of use for this claim.

10. Claimants' statement confirmed the period of diversion and period of use for claim 41I 30896-00 should be April 15 to October 15.

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 30894-00

1. The volume issue remark overcomes the prima facie status of claim 41I 30894-00. The evidence in the claim and case files supports a historical volume of 8.00 AC-FT.

2. The flow rate issue remark does not overcome the prima facie status of claim 41I 30894-00.

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3. The period of use issue remark overcomes the prima facie status of the claim. The evidence in the claim and case files shows the period of diversion and period of use should be April 15 to October 15.

RECOMMENDATIONS

1. The volume of claim 41I 30894-00 should be reduced to 8.00 AC-FT.

2. The period of diversion and period of use for claim 41I 30896-00 should be modified to April 15 to October 15.

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

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

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Last Order:

Darcy Anderson

Michael J. Anderson

Spur Dm Cattle Company LLC

96 Shelly Rd

Townsend, MT 59644-9745

SERVICE VIA ELECTRONIC MAIL

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(atty Claimants)

Notice: Service List Updated 6.17.24

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

Water Right Number: 411 30894-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: DARCY ANDERSON
96 SHELLY RD
TOWNSEND, MT 59644-9745

MICHAEL J ANDERSON
96 SHELLY RD
TOWNSEND, MT 59644-9745

Priority Date: SEPTEMBER 1, 1948

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 200.00 GPM

Volume: 8.00 AC-FT

Households: 2

Maximum Acres: 2.00

Source Name: GROUNDWATER

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		NWNWNE	21	6N	2E	BROADWATER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	2.00		NWNWNE	21	6N	2E	BROADWATER

Total: 2.00

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

Water Right Number: 411 30896-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DARCY ANDERSON
96 SHELLY RD
TOWNSEND, MT 59644-9745

MICHAEL J ANDERSON
96 SHELLY RD
TOWNSEND, MT 59644-9745

SPUR DM CATTLE COMPANY LLC
96 SHELLY RD
TOWNSEND, MT 59644-9745

Priority Date: JUNE 1, 1949

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 4.00 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: 160.00

Source Name: MISSOURI RIVER

Source Type: SURFACE WATER

ALSO KNOWN AS STARKWEATHER SLOUGH

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		NWNWNE	21	6N	2E	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 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	80.00		S2SE	16	6N	2E	BROADWATER
2	80.00		N2NE	21	6N	2E	BROADWATER

Total: 160.00

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.

30896-00

30897-00

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