

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: Connie Shindoll; Albert N. Shindoll Trust

NOTICE OF INTENT TO APPEAR: Jeffrey C. Marks

CASE 41I-0043-R-2023
41I 27418-00

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 27418-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Connie

Shindoll and the Albert N. Shindoll Trust. The claim received 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. Jeffrey Marks filed a notice of intent to appear.

FINDINGS OF FACT

1. Claim 41I 27418-00 appeared in the 41I Preliminary Decree as a claim for flood irrigation from Ray Creek.

2. The claim was decreed with a flow rate of 2.50 CFS for use on 45.30 acre as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	36.10		S2	1	7N	3E	BROADWATER
2	9.20		W2	6	7N	4E	BROADWATER
Total:	45.30						

3. The claim received the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
 THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 15.00
 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

4. Claimants filed a status report requesting the issue remarks be removed from the claim. (Doc.¹ 5.00). The status report indicated that removal of the issue remarks without changes to the elements of the claim resolves Mr. Marks’s notice of intent to appear.

5. The Statement of Claim originally claimed a 56.00-acre place of use. The place of use was reduced to 45.30 acres during adjudication of the 41I Temporary Preliminary Decree. In 1999, Donald C. Marks, Connie Shindoll, and Albert N. Shindoll signed a stipulation resolving Donald Marks’s objection which resulted in the reduction of acres. The 45.30 acres were based on the DNRC map depicting the historically irrigated acreage.

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.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

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.

CONCLUSION OF LAW

1. The issue remarks do not overcome the prima facie status of claim 41I 27418-00. The place of use was adjudicated during the Basin 41I Temporary Preliminary Decree and the evidence supporting the reduced acreage sufficiently disputes the evidence supporting the issue remark.

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41I 27418-00.

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 ELECTRONIC MAIL

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

Water Right Number: 41I 27418-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CONNIE SHINDOLL
PO BOX 607
TOWNSEND, MT 59644-0607

SHINDOLL ALBERT N TRUST
CONNIE SHINDOLL TRUSTEE
PO BOX 607
TOWNSEND, MT 59644-0607

***Priority Date:** JUNE 24, 1918

Type of Historical Right: DECREED

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:** 45.30

Source Name: RAY 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		NESENW	6	7N	4E	BROADWATER

Period of Diversion: MAY 1 TO JULY 31

Diversion Means: HEADGATE

Ditch Name: NEILD DITCH

Period of Use: MAY 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	36.10		S2	1	7N	3E	BROADWATER
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