

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

CASE 41I-0051-R-2023

41I 27404-00

41I 27406-00

41I 27415-00

41I 27416-00

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 are co-owned by Connie Shindoll and the Albert N. Shindoll Trust. The claims 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.

FINDINGS OF FACT

41I 27404-00

1. Claim 41I 27404-00 appeared in the 41I Preliminary Decree as a claim for stock drinking directly from Spring No. 4 in the SESENW of Section 35, T7N, R3E, Broadwater County.

2. The claim received the following issue remark:

ON 08/14/2002 CONNIE E. SHINDALL FILED A LATE OBJECTION TO CHANGE THE PLACE OF USE AND POINT OF DIVERSION LEGAL DISCRPTIONS. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

3. The Statement of Claim was filed by Shindoll Ranch, who claimed the point of diversion and place of use as it appeared in the 41I Preliminary Decree. The 2002 amendment requests modifying the township from 7N to 8N. According to the amendment, T7N was claimed in error. The 2002 amendment was taken as a late objection for purposes of adding the issue to the Basin 41I Preliminary Decree Objection List.

4. ML Bar Ranch LLC owns the entirety of Section 35, T7N, R3E, Broadwater County while Connie Shindoll owns the entirety of Section 35, T8N, R3E, Broadwater County.

5. Claimant filed a statement confirming the township of the point of diversion and place of use should be corrected from 7N to 8N. (Doc.¹ 6.00).

41I 27406-00

6. Claim 41I 27406-00 appeared in the 41I Preliminary Decree as a claim for a stock well in the NESENW of Section 11, T7N, R3E, Broadwater County.

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

7. The claim was decreed with a 40.00 gallons-per-minute (GPM) flow rate. The claim received the following issue remark:

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

8. The Statement of Claim claimed 40.00 GPM, however the Declaration of Vested Groundwater attached in support of the Statement of Claim listed a flow rate of 30.00 GPM.

9. Based on the conflicting flow rates, Claimant's statement requested that the flow rate be reduced to 35.00 GPM.

41I 27415-00

10. Claim 41I 27415-00 appeared in the 41I Preliminary Decree as a claim for a domestic well in the NWSESE of Section 3, T7N, R3E, Broadwater County. The claim was decreed with a priority date of December 27, 1963.

11. The claim received the following issue remark:

THE PRIORITY DATE AND TYPE OF RIGHT IS IN QUESTION. THE SOURCE ON THE FILED NOTICE OF COMPLETION (FORM GW3) APPEARS TO BE DIFFERENT FROM THE CLAIMED SOURCE.

12. The filed Notice of Completion does not list a specific source name, but the markings on the map are consistent with the claimed location of the well. There are no notes in the claim file supporting the issue remark.

13. Claimant confirmed that the elements of 41I 27415-00 were accurately claimed and decreed.

41I 27416-00

14. Claim 41I 27416-00 appeared in the 41I Preliminary Decree as a claim for a developed spring in the SENWNW of Section 6, T7N, R4E, Broadwater County. The claim was decreed with a flow rate of 40.00 GPM. The claim received the following issue remark:

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

15. The Statement of Claim claimed 40.00 GPM, however the Declaration of Vested Groundwater attached in support of the Statement of Claim did not list a specific flow rate. The Declaration references 15 miner's inches. There is no evidence supporting the issue remark.

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 27404-00

1. The late objection overcomes the prima facie status of claim 41I 27404-00. The evidence in the claim and case files shows the township of the point of diversion and place of use for claim 41I 27404-00 should be corrected from 7N to 8N.

41I 27406-00

2. The flow rate issue remark overcomes the prima facie status of the claim. Based on the conflicting evidence in the claim file, the flow rate of claim 41I 27406-00 should be reduced to 35.00 GPM.

41I 27415-00

3. The priority date issue remark does not overcome the prima facie status of claim 41I 27415-00. The evidence attached to the statement of claim is consistent with the priority date and source claimed.

41I 27416-00

4. The flow rate issue remark does not overcome the prima facie status of claim 41I 27416-00. There is no evidence supporting placement of the issue remark and the evidence attached to the statement of claim shows the flow rate is 40.00 GPM.

RECOMMENDATIONS

1. The point of diversion and place of use for claim 41I 27404-00 should be corrected from 7N to 8N.

2. The flow rate of claim 41I 27406-00 should be reduced to 35.00 GPM.

3. The issue remarks should be removed from claims.

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 Email Service

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

Water Right Number: 411 27404-00 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: MAY 1, 1950

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: SPRING, UNNAMED TRIBUTARY OF UNNAMED TRIBUTARY OF NORTH FORK RAY CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS SPRING NO. 4

THE WATER FROM THIS SPRING IN THE RAY CREEK DRAINAGE IS INSUFFICIENT TO CONTRIBUTE WATER TO RAY CREEK AND THIS SPRING PROVIDES WATER EVEN THOUGH RAY CREEK MAY NOT BE RUNNING.

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		SESENW	35	8N	3E	BROADWATER

Period of Diversion: MAY 1 TO NOVEMBER 30

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 1 TO NOVEMBER 30

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			SESENW	35	8N	3E	BROADWATER

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

Water Right Number: 41I 27406-00 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 1, 1925

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 35.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: GROUNDWATER

Source Type: GROUNDWATER

ALSO KNOWN AS WELL NO. 13

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	11	7N	3E	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			NESENW	11	7N	3E	BROADWATER

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

Water Right Number: 41I 27415-00 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: DECEMBER 27, 1963

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 15.00 GPM

Volume: 2.00 AC-FT

Households: 1

Maximum Acres: 0.50

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		NWSESE	3	7N	3E	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	0.50		NWSESE	3	7N	3E	BROADWATER

Total: 0.50

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

Water Right Number: 41I 27416-00 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: DECEMBER 27, 1963

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 40.00 GPM

Volume: 3.00 AC-FT

Households: 2

Maximum Acres: 0.50

Source Name: SPRING, UNNAMED TRIBUTARY OF RAY CREEK

Source Type: GROUNDWATER

ALSO KNOWN AS SPRING NO. 1

THE WATER FROM THIS SPRING IN THE RAY CREEK DRAINAGE IS INSUFFICIENT TO CONTRIBUTE WATER TO RAY CREEK AND THIS SPRING PROVIDES WATER EVEN THOUGH RAY CREEK MAY NOT BE RUNNING.

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		SENWNW	6	7N	4E	BROADWATER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

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	0.50		SENWNW	6	7N	4E	BROADWATER

Total: 0.50

Remarks:

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.

27407-00

27416-00