

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: TRI G Inc.

NOTICE OF INTENT TO APPEAR: Elliott Ranch LLC; Joseph
P. Nelson

CASE 41I-0053-R-2023

41I 11117-00

41I 11121-00

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

Claims 41I 11117-00 and 41I 11121-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claims are owned by TRI G Inc. 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. Elliott Ranch LLC and Joseph P. Nelson filed notices of intent to appear on each claim.

FINDINGS OF FACT

1. Claims 41I 11117-00 and 41I 11121-00 received the following issue remark:

THE PRIORITY DATE IS QUESTIONABLE. CASE 921, BROADWATER COUNTY, DOES NOT SPECIFY A MONTH OR DAY BUT DECREED THE RIGHTS AS 'CONTEMPORANEOUS & WITHOUT PRIORITY AS BETWEEN SAID PARTIES'. THE CLAIMS FOLLOWING THIS STATEMENT ALL CLAIMED MAY 23, 1869. 41I 11117-00, 41I 11120-00, 41I 11121-00, 41I 11122-00, 41I 11123-00, 41I 11124-00, 41I 11125-00, 41I 11126-00, 41I 11127-00, 41I 11128-00, 41I 11129-00, 41I 11130-00, 41I 11131-00, 41I 11132-00, 41I 11133-00, 41I 11134-00, 41I 11135-00, 41I 11136-00, 41I 11137-00, 41I 11138-00, 41I 11139-00, 41I 11140-00, 41I 11141-00, 41I 11142-00.

2. As stated in the issue remark, the claims list the same priority date – May 23, 1869. No water users objected to the priority date of claims 41I 11117-00 and 41I 11121-00.

3. Elliott Ranch LLC and Joseph P. Nelson withdrew their notices of intent to appear, stating that removal of the priority date issue remark without changes to the priority date resolved their NOIAs. (Doc.¹ 2.00, 3.00).

4. Claims 41I 11117-00 and 41I 11121-00 also received the following notice-type issue remark:

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.

5. The issue remark states the source element was modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remark indicates that if no objections are filed, the source name of the claims will remain as they appear on the abstract and the remark will be removed. Neither of the claims received objections to their source name.

PRINCIPLES OF LAW

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

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

1. The priority date issue remark does not overcome the prima facie status of claims 41I 11117-00 and 41I 11121-00.

2. The notice-type issue remark on claims 41I 11117-00 and 41I 11121-00 served its notice purpose.

RECOMMENDATIONS

1. The issue remarks should be removed from the claims.

2. The elements of each claim should remain as they appeared in the Basin 41I Preliminary Decree.

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

TRI G Inc
8545 US Hwy 287
Townsend, MT 59644

Service via Electronic Mail

Betsy R Story
Parsons Behle & Latimer
PO Box 104
Helena, MT 59624
(406) 410-5050
bstory@parsonsbehle.com
ecf@parsonsbehle.com
(*atty Elliott Ranch & Nelson*)

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.

11117-00

11120-00

11121-00

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

Water Right Number: 41I 11121-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TRI G INC
8545 US HWY 287
TOWNSEND, MT 59644

Priority Date: MAY 23, 1869

Type of Historical Right: DECREED

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 STOCK WATERING 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, BIG SPRINGS

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	6	4N	3E	BROADWATER

Period of Diversion: APRIL 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: BIG SPRINGS DITCH

Period of Use: APRIL 1 TO NOVEMBER 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			S2	3	5N	2E	BROADWATER
2		2		4	5N	2E	BROADWATER
3		9		4	5N	2E	BROADWATER
4		10		4	5N	2E	BROADWATER
5		7		4	5N	2E	BROADWATER
6		11		4	5N	2E	BROADWATER
7			SE	4	5N	2E	BROADWATER

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.