

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**

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CLAIMANTS: Mike Lewis Credit Shelter Trust; Sharon M.  
Revocable Living Trust

**CASE 41I-2035-R-2024**

41I 120841-00

41I 120843-00

**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 to 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 water right claims listed above 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 but did receive issue remarks from the Department of Natural Resources and Conservation (DNRC) raising potential legal or factual issues with the claims. The Water Court consolidated the claims into case 41I-2035-R-2024 to address the remarks.

### FINDINGS OF FACT

#### 41I 120841-00 and 41I 120843-00

1. Claims 41I 120841-00 and 41I 120843-00 are claims to Swamp Creek water for irrigating 315.00 acres in Section 25, T5N, R1E, Broadwater County. Each claim received the following substantive issue remarks:

THE BROADWATER COUNTY WATER RESOURCES SURVEY ( 1956 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

IT APPEARS POINT OF DIVERSION NO. 4 MAY BE INCORRECT. THE EXISTENCE OF A DIVERSION FACILITY CANNOT BE CONFIRMED FROM AVAILABLE DATA.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41I 120841-00 also received the following substantive remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON CROW CREEK WITH A PRIORITY DATE POSTDATING CASE NO. 816 , BROADWATER COUNTY.

The Water Court previously made factual findings that no change was necessary to the source, place of use, acres irrigated, point of diversion, means of diversion, and flow rate of claim 41I 120841-00. See, Case 41I-256, Master's Report, March 27, 1998 (adopted May 8, 1998). The Court also found no change was necessary to the place of use, acres irrigated, point of diversion, or means of diversion for claim 41I 120843-00. Case 41I-254, Master's Report, March 27, 1998 (Adopted April 27, 1998). The prior reports did not address the priority date of claim 41I 120841-00. However, nothing in the claim file suggests that Broadwater County Case No. 816 prohibited the future appropriation of water on Crow Creek.

Each claim also received the following remarks that served only to provide notice to the Claimants and other water users in the Preliminary Decree:

THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE PERIOD OF USE BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DITCH 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.

The Claimants agree that the claims are correct as decreed. Doc. 2.00.<sup>1</sup> The remarks should be removed from the claims.

### PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

### CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The priority date issue remark on claim 41I 120841-00 fails to overcome the prima facie status of the claim. The issues raised by the remaining substantive issue remarks are resolved by prior findings of the Court. The Notice Only Remarks have served their notice purpose.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove the issue remarks from the claims.

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<sup>1</sup> "Doc." refers to the docket number of a document filed in the Water Court's Full Court Enterprise Case Management system.

A Post Decree Abstract of Water Right Claim for each claim reflecting the recommended changes is attached to this Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**SERVICE VIA USPS MAIL**

Mike Lewis Credit Shelter Trust  
Sharon M Lewis Revocable Living Trust  
81 Lewis Kitto Ln  
Toston, MT 59643

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

**Water Right Number:** 41I 120841-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LEWIS, MIKE CREDIT SHELTER TRUST  
81 LEWIS KITTO LN  
TOSTON, MT 59643-9744

LEWIS, SHARON M REVOCABLE LIVING TRUST  
81 LEWIS KITTO LN  
TOSTON, MT 59643-9744

**Priority Date:** DECEMBER 31, 1924

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

THIS WATER RIGHT ALSO INCLUDES SUBIRRIGATION AS AN INCIDENTAL TYPE OF IRRIGATION.

**Flow Rate:** 10.00 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:** 315.00

**Source Name:** SWAMP CREEK

**Source Type:** SURFACE WATER

CROW CREEK AND SWAMP CREEK HAVE COMMINGLED WATERS. LOWER CROW CREEK CHANNEL SPLITS FROM CROW CREEK (AKA UPPER CROW CREEK CHANNEL) IN THE NENESE SEC 5 TWP 6N RGE 1E BROADWATER COUNTY FLOWING SOUTH TO COMMINGLE WATER WITH SWAMP CREEK BEGINNING IN THE NENESW SEC 16 TWP 5N RGE 1 E BROADWATER COUNTY AND SEPARATING AT SENESE SEC 22 TWP 5N RGE 1E BROADWATER COUNTY. CROW CREEK WATER THEN TRAVELS TO SWSWSW SEC 21 TWP 5N RGE 2E BROADWATER COUNTY TO THE CONFLUENCE WITH WARM SPRINGS CREEK.

**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		SWNENW	25	5N	1E	BROADWATER
<b>*Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE						
2		SWNWNE	25	5N	1E	BROADWATER
<b>*Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE						
3		SEWNNE	25	5N	1E	BROADWATER
<b>*Period of Diversion:</b> APRIL 15 TO OCTOBER 15						

**Diversion Means:** HEADGATE  
4 NWSNW 25 5N 1E BROADWATER

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** SUBIRRIGATION

**Ditch Name:** MCMULLAN DITCH

**\*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	155.00		NE	25	5N	1E	BROADWATER
2	80.00		E2NW	25	5N	1E	BROADWATER
3	80.00		E2SE	25	5N	1E	BROADWATER
<b>Total:</b>	<u>315.00</u>						

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**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.

120841-00      120843-00

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

**Water Right Number:** 41I 120843-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LEWIS, MIKE CREDIT SHELTER TRUST  
81 LEWIS KITTO LN  
TOSTON, MT 59643-9744

LEWIS, SHARON M REVOCABLE LIVING TRUST  
81 LEWIS KITTO LN  
TOSTON, MT 59643-9744

**Priority Date:** MAY 1, 1894

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

THIS WATER RIGHT ALSO INCLUDES SUBIRRIGATION AS AN INCIDENTAL TYPE OF IRRIGATION.

**\*Flow Rate:** 336.60 GPM

THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR 0.75 CFS . 41I 2236-00, 41I 120843-00.

UNDIVIDED 1/2 INTEREST IN A SINGLE WATER RIGHT TO 0.75 CFS. THE CLAIMANTS ROTATE USAGE OF THE FULL FLOW RATE OF 0.75 CFS AS MUTUALLY AGREED.

**\*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:** 315.00

**Source Name:** SWAMP CREEK

**Source Type:** SURFACE WATER

CROW CREEK AND SWAMP CREEK HAVE COMMINGLED WATERS. LOWER CROW CREEK CHANNEL SPLITS FROM CROW CREEK (AKA UPPER CROW CREEK CHANNEL) IN THE NENESE SEC 5 TWP 6N RGE 1E BROADWATER COUNTY FLOWING SOUTH TO COMMINGLE WATER WITH SWAMP CREEK BEGINNING IN THE NENESW SEC 16 TWP 5N RGE 1 E BROADWATER COUNTY AND SEPARATING AT SENESE SEC 22 TWP 5N RGE 1E BROADWATER COUNTY. CROW CREEK WATER THEN TRAVELS TO SWSWSW SEC 21 TWP 5N RGE 2E BROADWATER COUNTY TO THE CONFLUENCE WITH WARM SPRINGS CREEK.

**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		SWNENW	25	5N	1E	BROADWATER

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

2		SWNWNE	25	5N	1E	BROADWATER
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**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE  
 3 SENWNE 25 5N 1E BROADWATER  
**\*Period of Diversion:** APRIL 15 TO OCTOBER 15  
**Diversion Means:** HEADGATE  
 4 NWSNW 25 5N 1E BROADWATER  
**\*Period of Diversion:** APRIL 15 TO OCTOBER 15  
**Diversion Means:** SUBIRRIGATION  
**Ditch Name:** MCMULLAN DITCH  
**\*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	155.00		NE	25	5N	1E	BROADWATER
2	80.00		E2NW	25	5N	1E	BROADWATER
3	80.00		E2SE	25	5N	1E	BROADWATER
<b>Total:</b>	315.00						

**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.

120841-00      120843-00