

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: Alice C. Rieder; David A. Rieder

**CASE 41I-0018-R-2023**  
41I 7070-00  
41I 30130032

**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 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 7070-00**

1. Claim 41I 7070-00 appeared in the Basin 41I Preliminary Decree as a claim for sprinkler irrigation for use on 177.00 acres as follows:

Place of Use:							
ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1	48.00		W2NE	2	6N	2E	BROADWATER
2	30.00		NW	2	6N	2E	BROADWATER
3	55.00		SE	2	6N	2E	BROADWATER
4	44.00		SW	2	6N	2E	BROADWATER
<b>Total:</b>	<b>177.00</b>						

2. The claim received the following issue remarks:

THE BROADWATER COUNTY WATER RESOURCES SURVEY ( 1956 ) APPEARS TO INDICATE 158.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.  
THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

3. A 1989 DNRC Examination Worksheet in the claim file details the 158.00 irrigated acres in the 1956 Broadwater County WRS as follows:

data source # 2: <u>Broadwater WRS</u>		date: <u>1956</u>						
	ACRES	LOT	BLK	QTR	SEC	TWP	RGE	CNTY
001	<u>45.0</u>			NE	02	06N	02E	BR
002	<u>23.0</u>			NW	02	06N	02E	BR
003	<u>45.0</u>			SW	02	06N	02E	BR
004	<u>45.0</u>			SE	02	06N	02E	BR
<b>Total</b>	<b><u>158.0</u></b>							

4. The Court ordered Claimants to work with the DNRC to resolve the issue remarks.

5. DNRC Water Resource Specialist Allison Calkins filed a memorandum in this matter. (Doc.<sup>1</sup> 2.00). Claimant David Rieder contacted the DNRC as ordered.

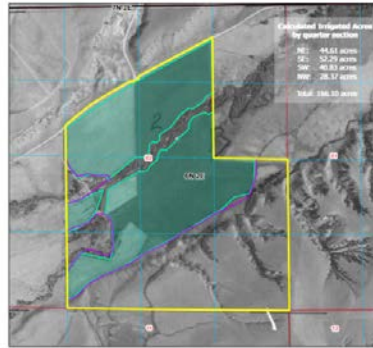
6. The statement of claim for claim 41I 7070-00 originally listed 210.00 irrigated acres.

7. During DNRC verification, then-owners Les and Barbara Shipman filed an amendment to reduce the place of use and maximum acres to the 177.00 acres that appeared in the Basin 41I Preliminary Decree.

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

8. In his discussions with Ms. Calkins, Mr. Reider stated that 158.00 acres sounded “about right” to describe the historical irrigated acreage.

9. No pre-1973 photographs were available to Ms. Calkins during her review of the claim, including the 1956 Broadwater County aerial imagery. However, using a 1979 aerial photograph, Ms. Calkins was able to verify 166.10 irrigated acres on the Reider property:



10. The acreage examined by Ms. Calkins is described as:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	44.61	48.00	W2NE	2	6N	2E	BROADWATER
2	52.29	30.00	NW	2	6N	2E	BROADWATER
3	40.83	55.00	SE	2	6N	2E	BROADWATER
4	28.37	44.00	SW	2	6N	2E	BROADWATER
<b>Total:</b>	<b>166.10</b>	<b>177.00</b>					

**41I 30130032**

11. Claim 41I 30130032 appeared in the Basin 41I Preliminary Decree as a domestic claim for a well in the NWNESW of Section 2, T6N, R2E, Broadwater County. The claim was decreed with a volume of 5.00 AC-FT.

12. The claim received the following volume issue remark:

THE CLAIMED VOLUME EXCEEDS THE 4.0 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

13. Based on Ms. Calkins’s memorandum, Mr. Reider does not have additional evidence to support the claimed volume, and he believes 4.00 AC-FT is sufficient.

14. Claim 41I 30130032 also received the following notice-type issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41I DECREE ISSUED 03/08/1995.

15. This remark served its notice purpose and should be removed from the claim.

## 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.
8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

## CONCLUSIONS OF LAW

### **41I 7070-00**

1. The acres irrigated issue remark overcomes the prima facie status of claim 41I 7070-00. The evidence in the claim file and DNRC memorandum show the

historically accurate place of use and maximum acres are as described in Finding of Fact No. 10.

**41I 30130032**

2. The volume issue remark overcomes the prima facie status of claim 41I 30130032. Based on the evidence in the claim file and the DNRC memorandum, the volume should be reduced to 4.00 AC-FT.

3. The notice-type issue remark served its notice purpose and should be removed from the claim.

**RECOMMENDATIONS**

1. The place of use for claim 41I 7070-00 should be modified to:

<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	44.61	48.00	W2NE	2	6N	2E	BROADWATER
2	52.29	30.00	NW	2	6N	2E	BROADWATER
3	40.83	55.00	SE	2	6N	2E	BROADWATER
4	28.37	44.00	SW	2	6N	2E	BROADWATER
<b>Total:</b>	<b>166.10</b>	<b>177.00</b>					

2. The maximum acres for claim 41I 7070-00 should be reduced to 166.10 acres.

3. The volume for claim 41I 30130032 should be reduced to 4.00 AC-FT.

4. The issue remarks should be removed from each claim abstract.

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**

Alice C Rieder  
David A Rieder  
PO Box 581  
Boulder, MT 59632

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

**Water Right Number:** 411 7070-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ALICE C RIEDER  
PO BOX 581  
BOULDER, MT 59632-0581

**Priority Date:** DECEMBER 31, 1950

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**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:** 166.10

**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		NENESW	2	6N	2E	BROADWATER

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** WELL

**Period of Use:** APRIL 1 TO OCTOBER 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	44.61		W2NE	2	6N	2E	BROADWATER
2	52.29		NW	2	6N	2E	BROADWATER
3	40.83		SE	2	6N	2E	BROADWATER
4	28.37		SW	2	6N	2E	BROADWATER

**Total:** 166.10

**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.

7070-00                      7074-00                      7075-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

815-00

7070-00

THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 41I P000815-00. THEY HAVE OVERLAPPING PLACES OF USE.

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

**Water Right Number:** 41I 30130032 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** ALICE C RIEDER  
PO BOX 581  
BOULDER, MT 59632-0581

DAVID A RIEDER  
PO BOX 581  
BOULDER, MT 59632-0581

**Priority Date:** DECEMBER 31, 1900

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 35.00 GPM

**Volume:** 4.00 AC-FT

**Households:** 1

**Maximum Acres:** 1.00

**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		NWNESW	2	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	1.00		NWNESW	2	6N	2E	BROADWATER

**Total:** 1.00