

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**

CLAIMANT: Radley Family Trust

CASE 41I-0034-R-2023
41I 46202-00
41I 46203-00

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 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

1. Claims 41I 46202-00 and 41I 46203-00 appeared in the Basin 41I Preliminary Decree as sprinkler/flood irrigation claims with the same 105.00-acre place of use. The place of use was decreed as follows:

Place of Use:							
<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	40.00		NWNE	28	9N	1E	BROADWATER
2	32.00		SWNE	28	9N	1E	BROADWATER
3	18.00		SENE	28	9N	1E	BROADWATER
4	15.00		SWNW	28	9N	1E	BROADWATER
Total:	105.00						

2. The claims 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 62.00 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. Claim 41I 46202-00 was adjudicated during the Basin 41I Temporary Preliminary Decree (TPD). The claim received an objection from the United States Bureau of Reclamation (BOR) and a notice of intent to appear from Wesley Furman based on place of use/maximum acres and flow rate.

4. Claim 41I 46202-00 was consolidated into Case 41I-105 to resolve the objection and notice of intent to appear.

5. On December 8, 1997, Water Master Carol Brown filed a Master’s Report. The Report states:

Flow rate, maximum acres and place of use do not require change on claim 41I-W-046202-00

6. The Master’s Report was adopted by the Water Judge on January 27, 1998.

7. Claim 41I 46203-00 was adjudicated during the Basin 41I Temporary Preliminary Decree (TPD). The claim received an objection from the United States Bureau of Reclamation (BOR) and a notice of intent to appear from Wesley Furman based on place of use/maximum acres and flow rate.

8. Claim 41I 46203-00 was consolidated into Case 41I-106 to resolve the objection and notice of intent to appear.

9. On March 6, 1998, Water Master Carol Brown filed a Master's Report. The Report states:

Maximum acres, place of use and flow rate do not require
change on claim 41I-W-046203-00 (Radley)

10. The Master's Report was adopted by the Water Judge on April 2, 1998.

Notice-Type Issue Remarks

11. The claims received the following notice-type issue remark:

POINT OF DIVERSION 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.

12. The remark indicates that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remarks will be removed. Neither of the claims received objections.

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

1. The place of use/maximum acres/flow rate issue remarks were resolved during adjudication of the TPD. The remarks should be removed from the claims.
2. The point of diversion issue remark provides notice of the changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remark does not raise unresolved issues that need to be addressed. No proceedings are required to resolve the remark; the remark should be removed from the abstracts.

RECOMMENDATIONS

1. The elements of claims 41I 46202-00 and 41I 46203-00 should remain as they appeared in the Basin 41I Preliminary Decree.
 2. The issue remarks should be removed from the claim abstracts.
- 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

Radley Family Trust
%Tyson R O'Connell
131 S Higgins Ave Ste P1
Missoula, MT 59802

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

Water Right Number: 41I 46202-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RADLEY FAMILY TRUST
%TYSON R O'CONNELL
131 S HIGGINS AVE STE P1
MISSOULA, MT 59802

Priority Date: MAY 1, 1914

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/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: 105.00

Source Name: BEAVER 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		SWSENE	29	9N	1E	BROADWATER

Period of Diversion: APRIL 15 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HANSEN-DAVIES DITCH

2		SWNWNW	28	9N	1E	BROADWATER
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Period of Diversion: APRIL 15 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: DALLAS-HANSEN-DAVIES DITCH

3		SWNWNE	28	9N	1E	BROADWATER
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Period of Diversion: APRIL 15 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: DALLAS-HANSEN-DAVIES DITCH

Period of Use: APRIL 15 TO NOVEMBER 1

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	40.00		NWNE	28	9N	1E	BROADWATER
2	32.00		SWNE	28	9N	1E	BROADWATER
3	18.00		SENE	28	9N	1E	BROADWATER

4	<u>15.00</u>	SWNW	28	9N	1E	BROADWATER
Total:	105.00					

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.

46202-00

46203-00

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

Water Right Number: 411 46203-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RADLEY FAMILY TRUST
%TYSON R O'CONNELL
131 S HIGGINS AVE STE P1
MISSOULA, MT 59802

Priority Date: MAY 1, 1870

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 1.25 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: 105.00

Source Name: BEAVER 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		SWSENE	29	9N	1E	BROADWATER

Period of Diversion: APRIL 15 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HANSEN-DAVIES DITCH

2		SWNWNW	28	9N	1E	BROADWATER
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Period of Diversion: APRIL 15 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: DALLAS-HANSEN-DAVIES DITCH

3		SWNWNE	28	9N	1E	BROADWATER
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Period of Diversion: APRIL 15 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: DALLAS-HANSEN-DAVIES DITCH

Period of Use: APRIL 15 TO NOVEMBER 1

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	40.00		NWNE	28	9N	1E	BROADWATER
2	32.00		SWNE	28	9N	1E	BROADWATER
3	18.00		SENE	28	9N	1E	BROADWATER

4	<u>15.00</u>	SWNW	28	9N	1E	BROADWATER
Total:	105.00					

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.

46202-00 46203-00

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.

46201-00 46203-00