

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**

CLAIMANTS: Cory L. Davis; Gloria J. Davis

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

CASE 41I-0059-R-2023
41I 11128-00
41I 11129-00

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 11128-00 and 41I 11129-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claims are

owned by Cory L. Davis and Gloria J. Davis. 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. Claim 41I 11128-00 was decreed as a flood irrigation claim that diverts water from Big Springs via a headgate in the NWSESE of Section 6, T4N, R3E, Broadwater County.

2. Claim 11129-00 was decreed as a claim for livestock drinking from Big Springs Ditch and is a multiple use of claim 41I 11128-00.

3. The claims 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.

4. Elliott Ranch LLC filed a notice of intent to appear on claim 41I 11128-00 and 41I 11129-00, stating:

Elliott Ranch LLC has water rights on Big Springs that may be impacted by any changes made to this water right. The purpose of this NOIA is to monitor and participate in the resolution of the DNRC Issue Remarks.

5. As stated in the issue remark, the claims list the same priority date – May 23, 1869.

6. Elliott Ranch LLC filed a withdrawal of their notice of intent to appear on each claim if the priority date issue remark is removed and no changes are made to the claims.

7. Claims 41I 11128-00 and 41I 11129-00 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.

8. The issue remark states the source name 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 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 priority date issue remark does not overcome the prima facie status of claims 41I 11128-00 and 41I 11129-00. All of the rights established by Case 921, Broadwater County claim the same priority date and no objections were filed to the priority date of claims 41I 11128-00 and 41I 11129-00. The priority date of the claims

should remain as it appeared in the Basin 41I Preliminary Decree, and the remark should be removed from the claims.

2. Because the priority date of the claims will remain the same, the notices of the intent to appear are withdrawn.

3. The notice-type 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.

RECOMMENDATION

1. The issue remarks should be removed from claims 41I 11128-00 and 41I 11129-00.

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 Electronic Mail

Hallee C Frandsen
W John Tietz
Browning Kaleczyc Berry & Hoven PC
PO Box 1697
Helena, MT 59624
hallee@bkbh.com
john@bkbh.com
megan@bkbh.com
(atty Cory & Gloria Davis)

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)

Notice: Service List Updated 5.9.24

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

Water Right Number: 41I 11128-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CORY L DAVIS
150 DRY CREEK RD
TOWNSEND, MT 59644-9708

GLORIA J DAVIS
PO BOX 978
TOWNSEND, MT 59644-0978

Priority Date: MAY 23, 1869

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.57 CFS

THIS RIGHT IS FOR 3/28 THE FLOW OF BIG SPRINGS AS DESCRIBED IN CASE NO. 921 , BROADWATER COUNTY.

***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: 214.00

***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	3.00		SWSWNE	3	5N	2E	BROADWATER
2	137.00		NW	3	5N	2E	BROADWATER
3	70.00		E2NE	4	5N	2E	BROADWATER
4	4.00		S2SESW	34	6N	2E	BROADWATER

Total: 214.00

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.

11128-00

11129-00

11130-00

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

Water Right Number: 41I 11129-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CORY L DAVIS
150 DRY CREEK RD
TOWNSEND, MT 59644-9708

GLORIA J DAVIS
PO BOX 978
TOWNSEND, MT 59644-0978

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			SWSWNE	3	5N	2E	BROADWATER
2			NW	3	5N	2E	BROADWATER
3			E2NE	4	5N	2E	BROADWATER
4			SESW	34	6N	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.

11128-00

11129-00

11130-00