

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: State of Montana Department of Natural
Resources

CASE 41I-0008-R-2023
41I 119466-00

OBJECTOR: City of Townsend

NOTICE OF INTENT TO APPEAR: Leonard H. Lambott

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

Claim 41I 119466-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by the State of Montana Department of Natural Resources. The City of Townsend (City) objected to the claim and Leonard H. Lambott filed a notice of intent to appear. The claim also received issue remarks.

FINDINGS OF FACT

1. The City of Townsend objected to claim 41I 119466-00 to determine its involvement in the Broadwater Missouri Water Users Association Deep Creek Exchange (Exchange).
2. On August 12, 2024, the City withdrew their objection. (Doc.¹ 12.00). The City's withdrawal was conditioned on the elements of claim 41I 119466-00 remaining as they appeared in the Basin 41I Preliminary Decree.
3. Mr. Lambott file an NOIA to monitor and participate in resolution of the issue remarks and the City's objection.
4. On September 6, 2024, Mr. Lambott withdrew his NOIA based on the City's withdrawal of their objection and the State's representations that it does not intend to seek modifications to the elements of 41I 119466-00. (Doc. 13.00).
5. Claim 41I 119466-00 received the following notice-type issue remarks:

THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE PURPOSE OF RIGHT, VOLUME AND 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.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON DEEP CREEK WITH A PRIORITY DATE POSTDATING CASE NO 465, MEAGHER COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

6. The City's objection does not question the elements identified in the issue remarks. The remarks served their notice purposes.

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.

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

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 City’s withdrawal of their objection and Mr. Lambott’s withdrawal of his NOIA resolve the outstanding issues in this matter.

2. The notice-type issue remarks on the claim served their notice purposes.

RECOMMENDATIONS

1. The elements of claim 41I 119466-00 should remain as they appeared in the Basin 41I Preliminary Decree.

2. The issue remark should be removed from the claim abstract.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

Abigail R Brown
Diana J Abbott
Parsons Behle & Latimer
PO Box 104
Helena, MT 59624
(406) 410-5050 Main
ecf@parsonsbehle.com
abbybrown@parsonsbehle.com
dabbott@parsonsbehle.com
(*atty Lambott*)

State of MT Dept of
Natural Resources/Toston Dam
Luke M Casey
PO Box 201601
Helena, MT 59620
lcasey@mt.gov

Breeann M Johnson
Kirsia A Shelkey
Western Roots Law PLLC
PO Box 7004
Bozeman, MT 59771
(406) 600-9389 BMJ
(406) 599-2087 KAS
johnson@westrootslaw.com
shelkey@westrootslaw.com
(*atty City of Townsend*)

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

Water Right Number: 411 119466-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF NATURAL RESOURCES
TOSTON DAM (BROADWATER-MISSOURI)
1424 9TH AVE
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: JULY 8, 1940

Type of Historical Right: USE

***Purpose (Use):** SALE

THIS RIGHT WAS ESTABLISHED PURSUANT TO SECTION 89-121 R.C.M. (1947) (REPEALED). THE RIGHT IS FOR SALE OF WATER THAT IS DIVERTED AND CONVEYED THROUGH THE BROADWATER-MISSOURI PROJECT CANAL TO WATER PURCHASERS WHO USE THE WATER FOR IRRIGATION AND STOCKWATER.

***Flow Rate:** 44.00 CFS

THIS RIGHT IS TO THE EXCESS OR FLOOD FLOWS OF DEEP CREEK WHEN THEY OCCUR. THE FLOW RATE IS THE CAPACITY OF THE PARSHALL FLUME LOCATED IN THE DITCH IMMEDIATELY DOWNSTREAM OF THE HEADGATE ON DEEP CREEK.

***Volume:** 5,000.00 AC-FT

Climatic Area: 3 - MODERATE

Source Name: DEEP 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		SWSWSE	3	6N	2E	BROADWATER

***Period of Diversion:** APRIL 1 TO AUGUST 15

Diversion Means: HEADGATE

Ditch Name: HIGH WATER SPILL

***Period of Use:** APRIL 1 TO AUGUST 15

THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF DEEP CREEK.

***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			NWNWNW	7	4N	3E	BROADWATER

THE GENERAL SERVICE AREA FOR THE BROADWATER-MISSOURI PROJECT IS:
TWP RGE COUNTY
6N 2E BROADWATER
7N 2E BROADWATER
7N 3E BROADWATER
8N 2E BROADWATER

THE PLACE OF USE FOR SALE OF WATER IS THE LOCATION OF THE HEADGATE OF THE BROADWATER-MISSOURI MAIN CANAL LOCATED AT THE WEST END OF THE TOSTON DAM ON THE MISSOURI RIVER.