

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: Douglas Harrington

**CASE 41I-0016-R-2023**  
41I 21050-00

**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**

Claim 41I 21050-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received an issue

remark. 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. Claim 41I 21050-00 is for a commercial well that diverts groundwater in the SWSWSW of Section 30, T7N, R4E, Broadwater County. The claim received the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM.

2. The Statement of Claim was filed on June 22, 1981. Neither a Notice of Appropriation nor a Notice of Completion was filed with the Statement of Claim.

3. The Basin 41I Preliminary Decree states the priority date is May 15, 1962, and the type of historical right is “use”.

4. On November 1, 2023, the Court ordered Claimant to file a copy of the Notice of Appropriation or Notice of Completion to support the claimed priority date of May 15, 1962. Nothing was filed by the deadline.

5. On January 22, 2024, the Court set a deadline for Claimant to show cause why the priority date should not be modified to June 22, 1981.

6. On January 29, 2024, Claimant requested an extension of the deadline, which was granted.<sup>1</sup>

7. On June 11, 2024, Claimant requested an additional extension of the deadline or, in the alternative:

2. A use right dated May 15, 1962 based on the following facts:

- The Deep Creek Inn and Bar has existed since at least 1948
- The well was developed prior to the month of May 15, 1962
- The well was only used by the Deep Creek Inn and Bar and subsequent owners from its inception date of May 15, 1962
- The well is wholly on that property which I own
- No other individual or business has access to it nor has it ever been used by any other individual or business

8. On June 14, 2024, the Court granted a three-week extension as requested. The order stated that:

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<sup>1</sup> The Court inadvertently extended the deadline to the existing show cause deadline. A second extension was granted with a new show cause deadline.

Claim 411 21050-00 cannot be a use right with a priority date of May 15, 1962 because if the right was in fact first used on this date, it would be subject to the 1961 Ground Water Code and its filing requirements.

9. The order also stated that “**[i]f nothing is filed by the deadline, the priority date will be modified to June 22, 1981.**” Nothing was filed by the deadline.

#### PRINCIPLES OF LAW

1. 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.

2. 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.

3. 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.

4. Montana law required an appropriator of groundwater by means of a well between January 1, 1962 and July 1, 1973 to timely file a Notice of Completion of Groundwater Appropriation with the county clerk of the county in which the appropriation was located. Section 89-2913(d), RCM (1963). Until a Notice of Completion was filed no right to use the water was recognized. Section 89-2913(e), RCM (1963). These provisions were repealed in 1973 with the enactment of § 85-2-306, MCA. The statute provides:

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962 and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221[a Statement of Claim] is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice as provided in subsection (3), or the date of the filing of the claim of existing water right.

### CONCLUSION OF LAW

1. Because a Notice of Completion was not filed pursuant to the 1961 Groundwater Code, the priority date for claim 41I 21050-00 is the date of the filing of the Statement of Claim. Section 85-2-305(4), MCA.

### RECOMMENDATIONS

1. The priority date for claim 41I 21050-00 should be modified to June 22, 1981.
2. The type of right for claim 41I 21050-00 should be modified to “filed.”
3. The issue remark should be removed from claim 41I 21050-00.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

Douglas Harrington  
1157 US Highway 12 E  
Townsend, MT 59644

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

**Water Right Number:** 41I 21050-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DOUGLAS HARRINGTON  
1157 US HIGHWAY 12 E  
TOWNSEND, MT 59644-9704

**Priority Date:** JUNE 22, 1981

THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

**Type of Historical Right:** FILED

**Purpose (Use):** COMMERCIAL

**Purpose Clarification:** TAVERN AND RESTAURANT

**Flow Rate:** 20.00 GPM

**Volume:** 6.70 AC-FT

**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		SWSWSW	30	7N	4E	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			SWSWSW	30	7N	4E	BROADWATER