

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: Samuel W. Antonick; Kim M. Johnson

CASE 41I-0021-R-2023
41I 88930-00

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 88930-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received an objection from the City of Townsend. The objection questions the involvement of the claim in the Broadwater-Missouri Water Users Association’s exchange. The claim also 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. Claim 41I 88930-00 appeared in the Basin 41I Preliminary Decree as a claim for sprinkler irrigation on 225.30 acres in Section 31, T7N, R3E, Broadwater County.

2. The claim received the following issue remarks:

THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 171.00 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 1988 DNRC Examination Worksheet in the claim file details the 171.00 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	SEC	TWP	RGE	CNTY
001			E2S2NE1/4	31	07N	03E	BR
002			N2S2NE	31	07N	03E	BR
003			S2S2NW	31	07N	03E	BR
004			N2N2SW	31	07N	03E	BR
005			NESENESE	36	07N	03E	BR
Total							171.00

4. The examiner also noted an additional 40.00 acres of irrigation in Section 31.

5. The Court ordered Claimants to work with the DNRC to resolve the acres irrigated issue remark.

6. DNRC Water Resource Specialist Jason Larsen met with Claimants and filed memorandums summarizing his findings. (Docs.¹ 4.00, 8.00).

7. Mr. Larsen based his findings on three aerial photographs – one from 1938, one from 1955, and one from 1979. Using these photographs, Mr. Larsen was able to verify irrigation on the entire claimed place of use. Mr. Larsen recommends removing the issue remarks and leaving the elements of claim 41I 88930-00 as they appeared in the Basin 41I Preliminary Decree.

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.

CONCLUSION OF LAW

1. Based on Mr. Larsen’s findings, the issue remark does not overcome the prima facie status of the claim. The evidence provided by Mr. Larsen shows historical irrigation of the entire place of use.

RECOMMENDATION

1. The issue remarks should be removed from the claim abstract, and the elements of claim 41I 88930-00 should remain as they appeared in the Basin 41I Preliminary Decree.

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

Kim M Johnson

Samuel W Antonick

726 Lower Deep Creek Rd

Townsend, MT 59644

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

Water Right Number: 411 88930-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: SAMUEL W ANTONICK
726 LOWER DEEP CREEK RD
TOWNSEND, MT 59644-9776

KIM M JOHNSON
726 LOWER DEEP CREEK RD
TOWNSEND, MT 59644-9776

Priority Date: APRIL 27, 1904

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 4.50 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:** 225.30

***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		NENWNE	33	7N	3E	BROADWATER

Period of Diversion: APRIL 20 TO OCTOBER 20

Diversion Means: HEADGATE

2		NESWNW	31	7N	3E	BROADWATER
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Period of Diversion: APRIL 20 TO OCTOBER 20

Diversion Means: PUMP

CONTRACT WATER FROM THE BROADWATER-MISSOURI CANAL IS USED TO SUPPLEMENT THIS WATER RIGHT.

Period of Use: APRIL 20 TO OCTOBER 20

***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	225.30			31	7N	3E	BROADWATER

Total: 225.30

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.

88929-00

88930-00