

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: Bruce Properties LLC; Speicher Family Trust

CASE 41I-0025-R-2023
41I 117772-00

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 117772-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim 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 117772-00 appeared in the Basin 41I Preliminary Decree as a flood irrigation claim for use on 520.00 acres as follows:

Place of Use:								
ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County	
1	338.00				2	5N	2E	BROADWATER
2	182.00		S2	35	6N	2E	BROADWATER	
Total:	520.00							

2. The claim received the following issue remarks:

THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 280.00 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 280.00 irrigated acres in the 1956 Broadwater County WRS as follows:

data source # 2: <u>Broadwater Co. WRS</u>		date: <u>June 1956</u>							
	ACRES	LOT	BLK	QTR	SEC	SEC	TWP	RGE	CNTY
001	<u>0</u>				S2	35	06N	02E	BR
002	<u>280.00</u>				NE	02	05N	02E	BR
Total	<u>280.00</u>								

comments: See attached examination worksheet p.o.u. addendum

4. DNRC Water Resource Specialist Jason Larsen filed a memorandum stating the remarks were placed on the claim in error. (Doc.¹ 6.00). The priority date of the claim is October 16, 1968, which is well after the 1956 Water Resources Survey.

5. Claim 41I 117772-00 also received the following notice-type issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON DRY CREEK WITH A PRIORITY DATE POSTDATING CASE NO 331, BROADWATER 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. No one objected to claim 41I 117772-00, and the remark served its notice purpose.

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.

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

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 acres irrigated issue remarks do not overcome the prima facie status of the claim. The 1956 Water Resources Survey occurred years before the first use of claim 41I 117772-00, meaning it is irrelevant to verification of acreage irrigated by claim 41I 117772-00.

2. The notice-type issue remark served its notice purpose.

RECOMMENDATION

1. The issue remarks should be removed from the claim abstract, and the elements of claim 41I 117772-00 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

Bruce Properties LLC
91 Lower Deep Creek Rd
Townsend, MT 59644

Speicher Family Trust
% Steven E & Anne Marie Speicher Trustees
399 Flynn Ln
Townsend, MT 59644

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

Water Right Number: 411 117772-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRUCE PROPERTIES LLC
91 LOWER DEEP CREEK RD
TOWNSEND, MT 59644-9772

SPEICHER FAMILY TRUST
% STEVEN E & ANNE MARIE SPEICHER, TRUSTEES
399 FLYNN LN
TOWNSEND, MT 59644

Priority Date: OCTOBER 16, 1968

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 7.50 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: 520.00

Source Name: DRY 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		SWNWNE	25	6N	2E	BROADWATER

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: DAVIS DITCH

Period of Use: APRIL 1 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	338.00			2	5N	2E	BROADWATER
2	182.00		S2	35	6N	2E	BROADWATER
Total:	520.00						

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.

117768-00

117772-00

117773-00