

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: Eric Bodmer; Connie Harris

**CASE 41I-0028-R-2023**  
41I 5989-00  
41I 5990-00

**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**

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

## FINDINGS OF FACT

### **41I 5989-00**

1. Claim 41I 5989-00 appeared in the Basin 41I Preliminary Decree as a claim for a domestic well with a flow rate of 8.00 GPM and a volume of 6.00 AC-FT.

2. The claim received the following issue remark:

VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM  
WOULD HAVE TO RUN 11.1 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO  
INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.

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3. The Court ordered Claimants to work with the DNRC to resolve the volume issue remark. (Doc.<sup>1</sup> 1.00).

4. DNRC Water Resources Specialist Thomas Sandau filed a memorandum summarizing his findings. (Doc. 3.00). Claimants failed to contact the DNRC as ordered.

5. Mr. Sandau's memorandum states that, based on his calculations, the claimed volume falls well within the DNRC's guidelines, and the volume should remain as 6.00 AC-FT.

### **41I 5990-00**

6. Claim 41I 5990-00 appeared in the Basin 41I Preliminary Decree as a March 15, 1915 claim for sprinkler irrigation on 2.50 acres in the NWSWSE of Section 9, T10N, R1W, Lewis and Clark County.

7. The claim received the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.  
THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL GROWING SEASON FOR THIS CLIMATIC  
AREA WHICH IS APRIL 15 TO OCTOBER 15.  
THE LEWIS AND CLARK COUNTY WATER RESOURCES SURVEY ( 1957 ) APPEARS TO INDICATE  
0.00 ACRES IRRIGATED.

8. Mr. Sandau conducted an extensive review of claim 41I 5990-00 and made the following findings:

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

To determine the acres irrigated, DNRC has reviewed WRS historic aerials and a USGS aerial taken in July 1947 (Exhibit A). Water Resource Survey historic imagery from July of 1964 shows no visible irrigation. The 1964 aerial photo the claimed place of use is almost filled with pine trees, showing the land does not appear even to be cultivated for irrigation at this time. The July 1947 aerial photo also shows no irrigated acres and that many of the trees existing in 1964 were present 10 years prior to the Water Resource Survey in 1957 (Exhibit B). It appears this land wasn't irrigated from at least 1947 to present day. This is confirmed by 2015 NAIP and 2015 CIR infrared imagery. Based on this information, it appears the land hasn't been irrigated since at least 1947. Without documentation or aerials that clarify the acres irrigated, DNRC cannot provide a recommendation to resolve the acres irrigated or the flow rate issues.

The Notice of Appropriation on file indicates a different place of use. This notice was filed with Lewis & Clark County by Raymond E. Leslie on July 8<sup>th</sup>, 1918. It mentions a place of use in Section 17 of Township 10N Range 1W, and a point of diversion in the SESW of Section 17 Township 10N Range 1W. This may suggest that the historic use wasn't actually in the place of use claimed, but within section 17. From NAIP CIR, the point of diversion in the Notice of Appropriation appears to be a spring and an unnamed tributary of Spokane Creek rather than an unnamed tributary of the Missouri River (Exhibit C). Without further information from the claimant to clarify the place of use between these two documents, such as a chain of title, confirming Raymond E. Leslie as a previous owner of the property, the DNRC cannot recommend any changes to the place of use or acres irrigated based on this Notice of Appropriation.

9. Based on Mr. Sandau's findings, the Court ordered Claimants to file evidence resolving the issue remarks. (Doc. 3.00). Nothing was filed by the deadline.

10. The Court then ordered Claimants to show cause why claim 41I 5990-00 should not be dismissed. (Doc. 4.00). The order stated that if nothing was filed by the deadline, claim 41I 5990-00 would be dismissed. Nothing was filed by the deadline.

#### 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.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

9. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

#### CONCLUSIONS OF LAW

##### **41I 5989-00**

1. The volume issue remark does not overcome the prima facie status of claim 41I 5989-00. The decreed volume is well within the DNRC's volume guidelines and there is no other evidence showing the decreed volume is historically inaccurate.

##### **41I 5990-00**

2. The acres irrigated issue remark overcomes the prima facie status of claim 41I 5990-00. The evidence in the claim file and Mr. Sandau's memorandum show claim 41I 5990-00 should be dismissed as abandoned/not perfected. Based on this evidence and Rule 22, W.R.Adj.R., claim 41I 5990-00 should be dismissed.

#### RECOMMENDATIONS

1. The elements of claim 41I 5989-00 should remain as they appeared in the 41I Preliminary Decree and the volume issue remark should be removed.

2. Claim 41I 5990-00 should be dismissed.

Post decree abstracts of each water right claim reflecting these recommendations are attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

Eric Bodmer  
Connie Harris  
6810 Canyon Ferry Rd  
Helena, MT 59602

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

**Water Right Number:** 41I 5989-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ERIC BODMER  
6810 CANYON FERRY RD  
HELENA, MT 59602-8529  
  
CONNIE HARRIS  
6810 CANYON FERRY RD  
HELENA, MT 59602-8529

**Priority Date:** AUGUST 9, 1966

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 8.00 GPM

**Volume:** 6.00 AC-FT

**Households:** 1

**Maximum Acres:** 2.50

**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		NWSWSE	9	10N	1W	LEWIS AND CLARK

**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	2.50		NWSWSE	9	10N	1W	LEWIS AND CLARK

**Total:** 2.50

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**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.

5989-00                      5990-00

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

**Water Right Number:** 411 5990-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** ERIC BODMER  
6810 CANYON FERRY RD  
HELENA, MT 59602-8529

CONNIE HARRIS  
6810 CANYON FERRY RD  
HELENA, MT 59602-8529

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** SPRING, UNNAMED TRIBUTARY OF MISSOURI RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.