

Montana Water Court
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FILED
10/10/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
411-0038-R-2023
Lockman, Melissa
6.00

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

* * * * *

CLAIMANTS: ~~Amy White; Chase L. White;~~ Linda Rae White

CASE 41I-0038-R-2023
41I 27399-00

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 27399-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim was decreed with Amy White, Chase L. White, and Linda Rae White as co-owners. The claim did not receive objections, counterobjections, or notices of intent to appear, but did receive 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 27399-00 appeared in the Basin 41I Preliminary Decree as a claim for sprinkler/flood irrigation of a 300.00-acre place of use as follows:

Place of Use:							
ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1	158.00		NE	5	6N	2E	BROADWATER
2	65.00		SE	5	6N	2E	BROADWATER
3	77.00		SE	32	7N	2E	BROADWATER
Total:	300.00						

THE PLACE OF USE INCLUDES GOVT LOT 1 AND 2 SEC 05 TWP 06N RGE 02E BROADWATER COUNTY.

2. The claim received the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
USDA AERIAL PHOTOGRAPH NO(S). 379-180 , DATED 08/28/1979 , APPEARS TO INDICATE 85.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

3. In the claim file, the DNRC examination worksheet describes the 85.00 verified acres as:

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data source # 1: Aerial Photo 379-180 date: 8-28-79
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ACRES   LOT   BLK   QTR SEC   SEC   TWP   RGE   CNTY
001     95.0
002     24.0
003     61.0
Total   85.0
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See attached examination worksheet p.o.u. addendum
comments: -----
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4. The Court ordered Claimants to work with the DNRC to resolve the issue remarks.

5. DNRC Water Resource Specialist Jason Larsen filed a memorandum in this matter. (Doc.¹ 3.00). Linda Rae White contacted the DNRC as ordered.

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

6. Mr. Larsen's review of the 1979 aerial photograph agreed with the DNRC's original examination of the claim, and found 85.88 irrigated acres as follows:

<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	158.00	21.05	SENE	5	6N	2E	BROADWATER
2	65.00	64.83	SE	5	6N	2E	BROADWATER
3	77.00		SE	32	7N	2E	BROADWATER

7. Water Resource Specialist Kathy Arndt originally examined the claim. Ms. Arndt spoke with original claimant Raymond Wallace (Ms. White's father) to discuss the difference between her finding of 85.00 irrigated acres and his claimed place of use. Ms. Arndt's notes state:

41I-W-027399 had the maximum claimed acres at 310.0 but the parcels only added up to 300.0 acres. During the interview Mr. Wallace decided 300.0 acres was the correct amount. I could only see 85.0 irrigated acres on the aerial photo, dated 1979. Mr. Wallace showed me on the photo what was being irrigated prior to 1973. That is what I outlined on the mylar. He said they claimed future use and that now some of the area not showing as irrigated in 1979 is indeed being irrigated. I explained that the claims were for water rights prior to 1973. Mr. Wallace understood that but decided not to amend the claim. I also explained that a remark will be

8. In Mr. Larsen's communications with Ms. White, she indicated that the acreage in Section 32 should not be included on the claim because it was not part of the ranch irrigated under claim 41I 27399-00.

9. The parcel in Section 32 is owned by Chase and Amy White. Chase and Amy filed a statement indicating they do not own an interest in claim 41I 27399-00. (Doc. 2.00).

10. The Court set a deadline for Ms. White to show cause why the place of use and maximum acres should not be reduced as recommended. (Doc. 5.00). Nothing was filed by the deadline

11. Based on his recommended reduction to the irrigated acreage, Mr. Larsen also recommended the flow rate be reduced to 3.26 CFS. Mr. Larsen calculated the reduced flow rate by multiplying the reduced acreage of 85.88 by 17 gallons per minute (GPM), which is the DNRC's standard flow rate guideline.

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.

CONCLUSIONS OF LAW

1. The irrigated acres issue remark overcomes the prima facie status of claim 41I 27399-00. Based on the evidence in the claim file showing the decreed 300.00-acre place of use included plans for future irrigation and the information from Ms. White regarding Section 32 not being irrigated, the place of use and maximum acres should be reduced to the 85.88 acres as described in Finding of Fact No. 6.

2. The flow rate issue remark also overcomes the prima facie status of claim 41I 27399-00. Based on the reduction of the maximum acres, the flow rate should be reduced to 3.26 CFS.

3. Based on their statement and the removal of Section 32 from the place of use, Chase and Amy White should be removed as owners on claim 41I 27399-00.

RECOMMENDATIONS

1. The maximum acres should be reduced to 85.88.
2. The place of use should be modified as follows:

<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	468.00 21.05		SE	5	6N	2E	BROADWATER
2	65.00 64.83		SE	5	6N	2E	BROADWATER
3	77.00		SE	32	7N	2E	BROADWATER

3. The flow rate should be reduced to 3.26 CFS.
4. The issue remarks should be removed from the claim abstract.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Linda Rae White
23 Lower Deep Creek Rd
Townsend, MT 59644

Last Order:
Amy White
Chase L White
PO Box 1331
Townsend, MT 59644

Notice: Service List & Caption Updated 10.10.24

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

Water Right Number: 41I 27399-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LINDA RAE WHITE
23 LOWER DEEP CREEK RD
TOWNSEND, MT 59644-9772

Priority Date: MARCH 30, 1972

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

THIS WATER RIGHT ALSO INCLUDES SUBIRRIGATION AS AN INCIDENTAL TYPE OF IRRIGATION.

Flow Rate: 3.26 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: 85.88

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF MISSOURI RIVER

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		NW	4	6N	2E	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: DRAIN DITCH

A DRAIN DITCH IS USED TO COLLECT AND CONVEY WATER TO A SECONDARY PUMPED DIVERSION LOCATED IN THE NESENE OF SEC 5 TWP 06N RGE 02E.

Period of Use: APRIL 15 TO OCTOBER 15

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	21.05		SENE	5	6N	2E	BROADWATER
2	64.83		SE	5	6N	2E	BROADWATER

Total: 85.88

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.