

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: Rosella M. Whitehead

CASE 41I-0072-R-2023
41I 44367-00

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 44367-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Rosella M. Whitehead. 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 44367-00 was decreed as a domestic claim that diverts water from Beaver Creek via a pipeline for use in the NWNWNW of Section 12, T8N, R1W, Broadwater County.

2. The claim received the following ownership issue remark:

AS OF 12/10/2021 , THIS WATER RIGHT APPEARS TO BE OWNED BY WINSTON LIVESTOCK CO ,
6547 US HIGHWAY 287 , WINSTON, MT , 59647.

3. The Court provided notice of Winston Livestock Co. of their potential ownership interest in claim 41I 44367-00. To date, they have not filed an ownership update. Ownership may be updated at any time with the DNRC.

4. Claim 41I 44367-00 also received the following volume issue remark:

VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD
HAVE TO RUN 22.1 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN
THE CLAIM FILE TO CONFIRM THIS FIGURE.

5. No objections were filed to claim 41I 44367-00.

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 DNRC volume issue remark is not supported by evidence sufficient to overcome the prima facie status afforded the volume element of the claim.

2. The ownership issue remark served its notice purpose. Ownership may be updated at any time with the DNRC.

RECOMMENDATION

1. The issue remarks should be removed from claim 41I 44367-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

Whitehead, Rosella M.
413 W Artemos Dr
Missoula, MT 59803

Potential Owner

Winston Livestock Co.
6547 US Hwy 287
Winston, MT 59647

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

Water Right Number: 41I 44367-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROSELLA M WHITEHEAD
413 W ARTEMOS DR
MISSOULA, MT 59803

Priority Date: MAY 1, 1910

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 2.00 GPM

Volume: 1.00 AC-FT

Households: 1

Source Name: BEAVER 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		NENENE	11	8N	1W	BROADWATER

Period of Diversion: MAY 1 TO AUGUST 31

Diversion Means: PIPELINE

Period of Use: MAY 1 TO AUGUST 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			NWNWNW	12	8N	1W	BROADWATER