

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: Darrell E. Baum; Nancy B. Kane; Douglas B. Baum; Raymond C. Baum

OBJECTOR: United States of America (USDA Forest Service)

CASE 41I-2027-R-2024
41I 30130483
41I 30130496

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 to 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 water rights listed above appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claims received objections from the United States Forest Service (“United States”) and issue remarks

from the Department of Natural Resources and Conservation (“DNRC”) raising potential legal or factual issues with the claims. The Water Court consolidated the claims into case 41I-2027-R-2024 to address the remarks and objections.

On March 26, 2024, the parties filed a stipulation signed by Darrell Baum, Douglas Baum, Raymond Baum, Nancy Kane, and Judith Coleman for the United States (“Stipulation”). Doc. 5.00.¹ The Stipulation states that upon entry of a ruling and final order in this case reflecting amendments in the Stipulation, the United States’ objections to claims 41I 30130483 and 41I 30130496 shall be deemed resolved. On May 7, 2024, Darrell Baum requested the Court add a point of a point of diversion and place of use to claim 41I 30130483, which was included on the original Statement of Claim but subsequently removed. The Court gave the parties an opportunity to notify the Court if they disagreed with Mr. Baum’s request, and informed the parties that if nothing was filed, the Court would conclude they agree with Mr. Baum’s requested additional point of diversion and place of use. Nothing was filed in response.

FINDINGS OF FACT

41I 30130483:

1. The United States objected to the place of use and point of diversion of claim 41I 30130483. Pursuant to the Stipulation and attached map, and Darrell Baum’s supplemental request, the point of diversion and place of use description should be corrected as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2NW	NW	5	8N	1W BROADWATER
2			N2SWNW	SESWNE	5	8N	1W BROADWATER
3			N2NESE	NWSE	5	8N	1W BROADWATER
4				NWNESE	33	9N 8N	1W BROADWATER
5				N2SENWSE	33	9N 8N	1W BROADWATER

Add POD/POU: SESWNW Section 5, 8N, R1W, Broadwater
 Period of Diversion: January 1 to December 31
 Diversion Means: Livestock direct from source
 Source Name: Spring, unnamed tributary of Antelope Creek

2. The claim received the following substantive issue remark:

¹ “Doc.” refers to the docket number of a document filed in the Water Court’s Full Court Enterprise Case Management system.

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

Though the claim identifies stock drinking from both Antelope Creek and springs that are unnamed tributaries of Antelope Creek, the evidence does not suggest there were multiple appropriations of water that require additional water right claims. The Claimants agree no implied claim is necessary in response to the remark. Docs. 6.00-7.00.

3. The claim also received the following issue remark that serves only to provide notice to the Claimant and other water users (Notice Only Remark):

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41I DECREE ISSUED 03/08/1995.

41I 30130496:

4. The United States objected to the place of use and point of diversion of claim 41I 30130496. Pursuant to the Stipulation and attached map, the point of diversion and place of use description should be corrected 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			E2NE	1	8N	2W	JEFFERSON
2		N2NESE	N2NWSE	1	8N	2W	JEFFERSON

5. The claim received the following Notice Only Remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41I DECREE ISSUED 03/08/1995.

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The Water Court is not bound by settlement agreements. Settlement agreements are subject to review and approval of the Water Court. Rule 17, W.R.Adj.R. Where a settlement seeks to enlarge or expand an element of a claim, the documentation

supporting the settlement must include sufficient evidence to meet the burden of proof. Rule 17(b), W.R.Adj.R.

3. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The claims should be modified as described above.

2. The substantive issue remark on claim 41I 30130483 fails to overcome the prima facie status of the claim; the Notice Only Remarks have served their notice purpose. The issue remarks should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the claims as described above and remove the issue remarks from the claims.

A Post Decree Abstract of Water Right Claim reflecting the recommended changes is attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Darrell E. Baum
190 Pole Creek Road
Winston, MT 59647-8501

Douglas B. Baum
52 Filson Road
Winston, MT 59647-8400

Raymond C. Baum
50 Cox Lane
Winston, MT 59647-8507

Service via USPS Mail:

Nancy B. Kane
PO Box 564
Broadus, MT 59317-0564

Service via Electronic Mail:

Judith E. Coleman
Trial Attorney
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 514-3553
judith.coleman@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

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

Water Right Number: 411 30130483 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NANCY B KANE
PO BOX 564
BROADUS, MT 59317-0564

BAUM, DARRELL FAMILY TRUST
DARRELL E BAUM TRUSTEE
190 POLE CREEK RD
WINSTON, MT 59647-8501

Priority Date: SEPTEMBER 24, 1920

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** ANTELOPE CREEK

Source Type: SURFACE WATER

***Source Name:** SPRING, UNNAMED TRIBUTARY OF ANTELOPE CREEK

Source Type: SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF ANTELOPE CREEK.

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		N2NW	5	8N	1W	BROADWATER

Source Name: ANTELOPE CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		N2NESE	5	8N	1W	BROADWATER
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Source Name: SPRING, UNNAMED TRIBUTARY OF ANTELOPE CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		N2SWNW	5	8N	1W	BROADWATER
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***Source Name:** ANTELOPE CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
4 NWNESE 33 9N 1W BROADWATER
***Source Name:** ANTELOPE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
5 N2SENWSE 33 9N 1W BROADWATER
Source Name: ANTELOPE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
6 SESWNW 5 8N 1W BROADWATER
Source Name: SPRING, UNNAMED TRIBUTARY OF ANTELOPE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
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			N2NW	5	8N	1W	BROADWATER
2			N2SWNW	5	8N	1W	BROADWATER
3			N2NESE	5	8N	1W	BROADWATER
4			NWNESE	33	9N	1W	BROADWATER
5			N2SENWSE	33	9N	1W	BROADWATER
6			SESWNW	5	8N	1W	BROADWATER

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

Water Right Number: 411 30130496 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

NANCY B KANE
PO BOX 564
BROADUS, MT 59317-0564

BAUM, DARRELL FAMILY TRUST
DARRELL E BAUM TRUSTEE
190 POLE CREEK RD
WINSTON, MT 59647-8501

BAUM, RAYMOND & BARBARA FAMILY TRUST
50 COX LN
WINSTON, MT 59647-8507

JDB FAMILY TRUST
% DOUGLAS B & JOANNE BAUM TRUSTEES
52 FILSON RD
WINSTON, MT 59647-8400

Priority Date: OCTOBER 29, 1917

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** SPOKANE CREEK

Source Type: SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF SPOKANE CREEK.

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

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2NE	1	8N	2W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		N2NESE	1	8N	2W	JEFFERSON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			E2NE	1	8N	2W	JEFFERSON
2			N2NESE	1	8N	2W	JEFFERSON