

bMontana 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: Dustin O'Connell; Allison O'Connell

OBJECTOR: Dustin E. O'Connell

CASE 41I-2040-R-2024

41I 89418-00

41I 89419-00

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

FINDINGS OF FACT

1. Stock claim 41I 89418-00 and domestic claim 41I 89419-00 were decreed with a Montana Department of Natural Resources (DNRC) issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE FORM GW2 , NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, IS 09/05/1969.

The DNRC added the remark to the claims during claim examination.

2. Dustin O'Connell objected to claims 41I 89418-00 and 41I 89419-00 indicating he is the proper owner of the claims. A Status Conference was conducted on June 20, 2024, only Objector Dustin E. O'Connell attended the Conference; the Minutes state:

The Court and the Objector discussed Mr. O'Connell's ownership objection to the claims in this case. It was determined that the Mr. O'Connell should be provided 60 days to file a Form 608 ownership update and any required supporting documentation with the DNRC,

If the remaining Claimants disagree with Mr. O'Connell's objection that he is the sole owner of the claims in this case, they must contact the Court by the deadline below. If nothing is received by the deadline, the Court will conclude the Claimants do not claim an ownership interest in the claims, and there is no dispute over ownership for the Water Court to resolve.

(Doc. 2.00).

3. The DNRC processed ownership updates in September 2024, and the present record ownership of claims 41I 89418-00 and 41I 89419-00 reflects only Dustin O'Connell and Allison O'Connell as the record owners of the claims. The ownership updates appear to address Dustin O'Connell's ownership Objections.

4. Claims 41I 89418-00 and 41I 89419-00 were claimed and decreed as "filed" rights with June 13, 1968 priority dates. Both claims were also decreed with remarks questioning the priority date. All issue remarks must be addressed.

It appears the claimed June 13, 1968 priority dates reflect the date Jack Martinez noted on the Notice of Completion of Groundwater Appropriation by Means of Well

Form (GW2) (hereinafter “Notice of Completion”) – the date the claimed well was completed.

QUADREPLICATE

LOG

Top of Ground
(Elev. above sea level)

0 - 21' rubble, clay
some sand

21 - 38' fairly soft
brown colored
limestones

38 - 43' tight light
colored lime
stone

43 - 61' firm to medium
hard lime with
some clay some
lime, light brown
color fairly
clean of clay

Jack Martinez
Owner

Schuyt Price
Driller

Glancy, Mont.
Address

Date of Notice of appropriation of groundwater

Date well started June 3, 1969 Date completed June 13, 1969

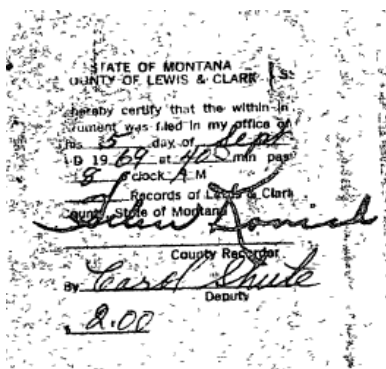
Type of well Drilled
(Dug, Driven, bored or drilled)

Equipment used Churn drill

Water use: Domestic ☐ Municipal ☐ Stock ☐ Irrigation ☐
Industrial ☐ Drainage ☐ Other ☐

Indicate on the diagram the character and thickness of the different strata met with in drilling, such as soil, clay, shale, gravel, rock or sand, etc. Show depth at which water is encountered, thickness and character of water-bearing

The issue remark references the date the Notice of Completion was filed at the Lewis and Clark County Clerk and Recorder’s Office – September 5, 1969:



PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.
2. A properly filed Statement of Claim for Existing Water 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.

The information in the claim file and provided by the claimant is sufficient to overcome the prima facie status of the claim. Claims 41I 89418-00 and 41I 89419-00 should be modified to modify the priority date to September 5, 1969.

3. Between January 1, 1962 and July 1, 1973, appropriators of groundwater were required to file both a Notice of Appropriation (GW1) and a Notice of Completion to have a claim's priority date relate back to when water was first diverted and used. At present, the record for claim 41I 89418-00 and 41I 89419-00 only includes a Notice of Completion; if only a Notice of Completion was filed, the priority date is the date of filing. Section 89-2913(e), RCM (1965). Based on the requirements of the 1961 Groundwater Code, the priority date for claims 41I 89418-00 and 41I 89419-00 should be September 5, 1969.

4. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a), (b), MCA.

RECOMMENDATIONS

1. The priority date for claims 41I 89418-00 and 41I 89419-00 should be modified to September 5, 1969

2. The issue remarks should be removed from claims 41I 89418-00 and 41I 89419-00.

3. The Objections to claims 41I 89418-00 and 41I 89419-00 should be dismissed.

Abstracts are attached.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Dustin E O'Connell
Allison O'Connell
547 Sussex Ct
Helena, MT 59601
Dustin.oconnell48@gmail.com

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

Water Right Number: 411 89418-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALLISON OCONNELL
547 SUSSEX CT
HELENA, MT 59601

DUSTIN OCONNELL
547 SUSSEX CT
HELENA, MT 59601

Priority Date: SEPTEMBER 5, 1969

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 20.00 GPM

***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: 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		SWNENW	26	10N	4W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION BLOCK: 14

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			SWNENW	26	10N	4W	LEWIS AND CLARK

Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION BLOCK: 14

SEE WATER RIGHT FILE FOR SUBDIVISION INFORMATION.

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

89418-00

89419-00

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

Water Right Number: 41I 89419-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALLISON OCONNELL
547 SUSSEX CT
HELENA, MT 59601

DUSTIN OCONNELL
547 SUSSEX CT
HELENA, MT 59601

Priority Date: SEPTEMBER 5, 1969

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 4.00 AC-FT

Households: 1

Maximum Acres: 1.50

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		SWNENW	26	10N	4W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: HIGHLAND PARK BLOCK: 14

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	1.50		SWNENE	26	10N	4W	LEWIS AND CLARK

Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION BLOCK: 14

Total: 1.50

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

89418-00

89419-00