

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

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

\*\*\*\*\*

CLAIMANTS: Ferrat Ranch LLC; State of Montana Department  
of Natural Resources

OBJECTOR: City of Townsend

**CASE 41I-0007-R-2023**

41I 46162-00

41I 119460-00

**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. Claim 41I 46162-00 is owned by Ferrat Ranch LLC (“Ferrat”) and claim 41I 119460-00 is owned by the Department of Natural Resources and Conservation (“DNRC”). Claim 41I 119460-00 received an objection from the City of Townsend. The claims received a common issue remark. 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. On August 12, 2024, the City of Townsend withdrew their objection to claim 41I 119460-00. (Doc.<sup>1</sup> 9.00).

2. Claims 41I 46162-00 and 41I 119460-00 received the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.  
119460-00 46162-00

3. Ferrat and the DNRC filed a *Stipulation*. (Doc. 11.00). The *Stipulation* proposes dismissing claim 41I 46162-00.

4. Claim 41I 119460-00 also received the following notice-type issue remark:

THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE VOLUME BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST. ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

5. The City of Townsend withdrew their objection to the claim.

### 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.

---

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

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. The Water Court is not bound by parties’ settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

9. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

#### CONCLUSIONS OF LAW

1. The duplicate filings issue remark overcomes the prima facie status of claims 41I 46162-00 and 41I 119460-00. Dismissal of claim 41I 46162-00 resolves the issue remark.

2. The notice-type remark served its notice purpose.

#### RECOMMENDATIONS

1. The *Stipulation* should be approved by the Court.

2. Claim 41I 46162-00 should be dismissed.
2. The issue remarks should be removed from claim 41I 119460-00.

A post decree abstract of each water right claim reflecting these recommendations is attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

Ferrat Ranch LLC  
191 Ferrat Ln  
Toston, MT 59643

**Service via Electronic Mail**

Breeann M Johnson  
Kirsia A Shelkey  
Western Roots Law PLLC  
PO Box 7004  
Bozeman, MT 59771  
(406) 600-9389 BMJ  
(406) 599-2087 KAS  
johnson@westrootslaw.com  
shelkey@westrootslaw.com  
(atty City of Townsend)

State of MT Dept of  
Natural Resources/Toston Dam  
% Luke Casey  
PO Box 201601  
Helena, MT 59620  
lcasey@mt.gov

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

**Water Right Number:** 411 46162-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** FERRAT RANCH LLC  
191 FERRAT LN  
TOSTON, MT 59643-9732

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** STOCK

**Flow Rate:**

**Volume:**

**Source Name:** MISSOURI RIVER

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

---

**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 411 119460-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MONTANA, STATE OF DEPT OF NATURAL RESOURCES  
TOSTON DAM (BROADWATER-MISSOURI)  
1424 9TH AVE  
PO BOX 201601  
HELENA, MT 59620-1601

**Priority Date:** JUNE 28, 1938

**Type of Historical Right:** FILED

**\*Purpose (Use):** SALE

THIS RIGHT WAS ESTABLISHED PURSUANT TO SECTION 89-121 R.C.M. (1947) (REPEALED). THE RIGHT IS FOR SALE OF WATER THAT IS DIVERTED AND CONVEYED THROUGH PROJECT FACILITIES TO WATER PURCHASERS. THE HISTORICAL USES FOR THIS WATER INCLUDE IRRIGATION AND STOCKWATER.

**Flow Rate:** 400.00 CFS

**\*Volume:** 103,790.00 AC-FT

**Climatic Area:** 3 - MODERATE

**Source Name:** 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		NWNWNW	7	4N	3E	BROADWATER

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** DIVERSION DAM

**Ditch Name:** BROADWATER-MISSOURI MAIN CANAL

POINT OF DIVERSION IS IN GOVT LOTS 3 AND 4 IN SEC 07 TWP 04N RGE 03E BROADWATER COUNTY.

WATER FOR THE BROADWATER-MISSOURI PROJECT IS DIVERTED AT THE PROJECT HEADGATE AT TOSTON DAM AND FLOWS THROUGH THE MAIN CANAL APPROXIMATELY ONE AND ONE-HALF MILES TO A FLUME LOCATED IN THE W2NWN SEC 6 TWP 04N RGE 03E WHERE IT DIVIDES INTO THE EAST SIDE AND WEST SIDE CANALS.

**Period of Use:** APRIL 1 TO OCTOBER 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	7	4N	3E	BROADWATER

THE GENERAL SERVICE AREA FOR THE BROADWATER-MISSOURI PROJECT IS:

TWP	RGE	COUNTY
5N	2E	BROADWATER
6N	2E	BROADWATER
6N	3E	BROADWATER
7N	2E	BROADWATER
7N	3E	BROADWATER
8N	2E	BROADWATER

THE PLACE OF USE FOR SALE OF WATER IS THE LOCATION OF THE HEADGATE OF THE BROADWATER-MISSOURI MAIN CANAL LOCATED AT THE WEST END OF THE TOSTON DAM ON THE MISSOURI RIVER.

---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

5032-00      5033-00      5034-00      5035-00      5036-00      21626-00  
119460-00

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.

119460-00      119461-00

SEE ORIGINAL CLAIM FILE FOR 41I 119640 FOR THE LOCATION MAP OF THE GENERAL SERVICE AREA FOR SALE OF WATER UNDER THIS STATE-OWNED PROJECT. THE CLAIM FILE ALSO CONTAINS A MEMORANDUM THAT EXPLAINS WATER SALE AND DELIVERY UNDER THE PROJECT.

THE MAY 7, 2001 STIPULATION FILED IN CASE 41I-383 SPECIFIES THE ADDITION OF THE FOLLOWING REMARK: THE CLAIMANT MUST COMPLY WITH THE REQUIREMENTS OF TITLE 85, CHAPTER 2, PART 4 OF THE MONTANA CODE ANNOTATED BEFORE CONTRACTING TO SELL WATER TO ANY PARTY FOR ANY USE OTHER THAN IRRIGATION AND STOCKWATER UNDER THIS WATER PROJECT.