

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**

\*\*\*\*\*

CLAIMANT: Jerrie L. Evans

OBJECTOR: Leonard H. Lambott

**CASE 41I-0019-R-2023**  
41I 7079-00

**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 7079-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received an objection

from Leonard Lambott. The claim also received an 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. Claim 41I 7079-00 was decreed as a flood irrigation claim for 1.50 CFS from Deep Creek.
2. Mr. Lambott objected to the claim based on its potential involvement in the Broadwater-Missouri Water Users Association's exchange.
3. On October 9, 2024, Mr. Lambott withdrew his objection. (Doc.<sup>1</sup> 9.00). The withdrawal states that his objection is withdrawn so long as the claim is decreed without reference to the Broadwater Missouri Canal or an exchange. *Id.*
4. Claimant has not requested a remark referencing the Broadwater Missouri Canal or an exchange.
5. The claim also received the following issue remark:  
THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 19.00 GPM PER ACRE.
6. The 2.50 CFS flow rate was decreed by a previous district court case. There is no information or evidence, other than exceeding the DNRC's guideline, that the flow rate is historically inaccurate.

### 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.

---

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

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. Mr. Lambott's withdrawal of his objection to claim 41I 7079-00 resolves the objection.

2. The flow rate issue remark does not overcome the prima facie status of claim 41I 7079-00. The DNRC's guidelines do not constitute evidence and there is no information in the claim file indicating the decreed flow rate is historically inaccurate.

#### RECOMMENDATIONS

1. The issue remark should be removed from claim 41I 7079-00.

2. The elements of claim 41I 7079-00 should remain as they appeared in the Basin 41I Preliminary Decree.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

Jerrie L Evans  
7358 W Lakeside Dr  
Littleton, CO 80125

**Service via Electronic Mail**

Abigail R Brown  
Diana J. Abbott  
Parsons Behle & Latimer  
PO Box 104  
Helena, MT 59624  
406-410-5050 Main  
ecf@parsonsbehle.com  
abbybrown@parsonsbehle.com  
dabbott@parsonsbehle.com  
(*atty Lambott*)

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

**Water Right Number:** 411 7079-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JERRIE L EVANS  
7358 W LAKESIDE DR  
LITTLETON, CO 80125-9628

**Priority Date:** MAY 1, 1867

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.50 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:** 35.00

**Source Name:** DEEP 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		NESESE	8	6N	2E	BROADWATER

**Period of Diversion:** JUNE 1 TO SEPTEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** SECTION 8 DITCH

**Period of Use:** JUNE 1 TO SEPTEMBER 1

**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	30.00		E2SE	8	6N	2E	BROADWATER
2	5.00		W2SWSW	9	6N	2E	BROADWATER
<b>Total:</b>	<b>35.00</b>						