

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: Darcy Anderson; Michael J. Anderson; Spur Dm
Cattle Company LLC

CASE 41I-0040-R-2023
41I 30897-00
41I 30898-00

OBJECTOR: Leonard H. Lambott

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. The claims received objections from Leonard Lambott. The claims also 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 30897-00 appeared in the Basin 41I Preliminary Decree as a sprinkler/flood irrigation claim that diverts water from Deep Creek via a headgate in the NWNENE of Section 22, T6N, R2E, Broadwater County. The claim received the following issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
WATER IS NOT DIVERTED FROM THE CLAIMED SOURCE. WATER FROM THE CLAIMED SOURCE IS EXCHANGED FOR WATER DIVERTED FROM A DIFFERENT SOURCE. DUE TO THE EXCHANGE OF WATER, THE SOURCE AND PRIORITY DATE CANNOT BE CONFIRMED.

2. Claim 41I 30898-00 appeared in the Basin 41I Preliminary Decree as a sprinkler/flood irrigation claim that diverts water from Deep Creek via a headgate in the NENENW of Section 10, T6N, R2E, Broadwater County. The claim received the following issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
WATER IS NOT DIVERTED FROM THE ORIGINALLY APPROPRIATED SOURCE. WATER FROM THE CLAIMED SOURCE IS EXCHANGED FOR WATER DIVERTED FROM A DIFFERENT SOURCE. DUE TO THE EXCHANGE OF WATER, THE SOURCE AND PRIORITY DATE CANNOT BE CONFIRMED.

3. Mr. Lambott objected to claims 41I 30897-00 and 41I 30898-00 based on their involvement in the historical exchange on Deep Creek and potentially duplicate claims.

4. On December 16, 2024, the parties filed a *Settlement Agreement*. (Doc.¹ 13.00).

5. The *Settlement Agreement* proposes the following changes to the point of diversion for both claims to:

Point of Diversion:					
ID	QTR SEC	SEC	TWP	RGE	COUNTY
1	NENENW	10	6N	2E	Broadwater
Secondary	SWNESW	15	6N	2E	Broadwater

6. As described in the *Settlement Agreement*:

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

4. In the 1950s, after the BMWUA Canal was constructed, the point of diversion for 41I 30897-00 and 41I 30898-00 had to be moved. An agreement was made with the BMWUA Canal Company for water to be diverted from BMWUA Canal in the SWNESW of Section 15, T6N, R2E, and an equivalent amount released into Deep Creek in Section 10, T6N, R2E, which allowed the senior water rights, 41I 30897-00 and 41I 30898-00 to be satisfied.

7. The *Settlement Agreement* also proposes modifying the information remark on each claim as follows:

WATER DIVERTED FROM THE BROADWATER-MISSOURI WATER USERS ASSOCIATION EAST SIDE CANAL IS REPLACED WITH WATER DECREED FROM DEEP CREEK CASE NO. 465, MEAGHER COUNTY SO AS NOT TO DEPRIVE DOWNSTREAM SENIOR DECREED WATER RIGHTS OF THE WATER TO WHICH THEY WOULD HAVE BEEN ENTITLED IN THE ABSENCE OF SUCH SUBSTITUTION.

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.

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.

CONCLUSIONS OF LAW

1. The objections and issue remarks overcome the prima facie status of claims 41I 30897-00 and 41I 30898-00. The evidence provided by the parties shows the historical points of diversion are as described above.

2. The evidence provided by the parties also shows the proposed language for the information remark more accurately describes the relationship between claims 41I 30897-00 and 41I 30898-00 and the historical exchange.

RECOMMENDATIONS

1. The Court should accept the *Settlement Agreement*.
2. The point of diversion for both claims should be modified to:

Point of Diversion:

<u>ID</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	NENENW	10	6N	2E	Broadwater
Secondary	SWNESW	15	6N	2E	Broadwater

3. The information remark on both claims should be modified to:

WATER DIVERTED FROM THE BROADWATER-MISSOURI WATER USERS ASSOCIATION EAST SIDE CANAL IS REPLACED WITH WATER DECREED FROM DEEP CREEK CASE NO. 465, MEAGHER COUNTY SO AS NOT TO DEPRIVE DOWNSTREAM SENIOR DECREED WATER RIGHTS OF THE WATER TO WHICH THEY WOULD HAVE BEEN ENTITLED IN THE ABSENCE OF SUCH SUBSTITUTION.

4. The issue remarks should be removed from the claim abstracts.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

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(atty Andersons & Spur Cattle Co.)

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

Water Right Number: 411 30897-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DARCY ANDERSON
96 SHELLY RD
TOWNSEND, MT 59644-9745

MICHAEL J ANDERSON
96 SHELLY RD
TOWNSEND, MT 59644-9745

SPUR DM CATTLE COMPANY LLC
96 SHELLY RD
TOWNSEND, MT 59644-9745

Priority Date: MARCH 1, 1868

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 394.94 GPM

***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: 160.00

Source Name: DEEP CREEK

Source Type: SURFACE WATER

WATER DIVERTED FROM THE BROADWATER-MISSOURI WATER USERS ASSOCIATION EAST SIDE CANAL IS REPLACED WITH WATER DECREED FROM DEEP CREEK CASE NO. 465, MEAGHER COUNTY SO AS NOT TO DEPRIVE DOWNSTREAM SENIOR DECREED WATER RIGHTS OF THE WATER TO WHICH THEY WOULD HAVE BEEN ENTITLED IN THE ABSENCE OF SUCH SUBSTITUTION.

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		NENENW	10	6N	2E	BROADWATER

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

2 - SECONDARY		SWNESW	15	6N	2E	BROADWATER
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Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MAY 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	80.00		S2SE	16	6N	2E	BROADWATER
2	80.00		N2NE	21	6N	2E	BROADWATER
Total:	160.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

30896-00 30897-00 30898-00

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

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TOWNSEND, MT 59644-9745

MICHAEL J ANDERSON
96 SHELLY RD
TOWNSEND, MT 59644-9745

SPUR DM CATTLE COMPANY LLC
96 SHELLY RD
TOWNSEND, MT 59644-9745

Priority Date: MAY 1, 1868

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.75 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: 160.00

Source Name: DEEP CREEK

Source Type: SURFACE WATER

WATER DIVERTED FROM THE BROADWATER-MISSOURI WATER USERS ASSOCIATION EAST SIDE CANAL IS REPLACED WITH WATER DECREED FROM DEEP CREEK CASE NO. 465, MEAGHER COUNTY SO AS NOT TO DEPRIVE DOWNSTREAM SENIOR DECREED WATER RIGHTS OF THE WATER TO WHICH THEY WOULD HAVE BEEN ENTITLED IN THE ABSENCE OF SUCH SUBSTITUTION.

WATER DECREED FROM DEEP CREEK, CASE NO. 465, MEAGHER COUNTY, IS EXCHANGED FOR WATER DIVERTED FROM THE BROADWATER-MISSOURI WATER USERS ASSOCIATION EAST SIDE CANAL AT A POINT IN THE SWNESW 15, TWP 06N, RGE 02E.

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		NENENW	10	6N	2E	BROADWATER

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BROADWATER-MISSOURI CANAL (EAST SIDE)

2 - SECONDARY		SWNESW	15	6N	2E	BROADWATER
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Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE
Ditch Name: BROADWATER-MISSOURI CANAL (EAST SIDE)
Period of Use: MAY 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>
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