

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: Corbin Water Users Association

CASE 41I-0118-R-2024
41I 49508-00

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 49508-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The record owner of the claim is

Corbin Water Users Association. The claim 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 49508-00 was decreed as a multiple domestic claim that diverts water from Spring Creek for a water users association. The claim received the following issue remark:

AS OF 12/13/2021 , THIS WATER RIGHT APPEARS TO BE OWNED BY MONTANA TUNNELS MINING, INC. , PO BOX 176 , JEFFERSON CITY, MT , 59638-0176.

2. The Court provided Montana Tunnels Mining Inc. of their potential ownership interest in claim 41I 49508-00. To date, ownership has not been updated. Ownership may be updated at any time through the DNRC.

3. Claim 41I 49508-00 was decreed with a volume of 100.00 AC-FT. The claim received the following volume issue remarks:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 97.05 ACRE-FEET PER YEAR.

THE CLAIMED VOLUME APPEARS TO EXCEED THE REASONABLE AND CUSTOMARY VOLUME FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF 21.0 ACRE-FEET PER YEAR.

4. The Court ordered Corbin Water Users Association (or Montana Tunnels Mining Inc. if ownership was updated) to file evidence supporting the historically accurate volume. (Doc.¹ 1.00). Nothing was filed by the deadline.

5. The Court then ordered Corbin Water Users Association (or Montana Tunnels Mining Inc. if ownership was updated) to show cause why the volume should not be reduced to 97.50 acre-feet, consistent with the feasible volume. The order stated that if nothing was filed by the deadline, “the volume of claim 41I 49508-00 will be reduced to 97.05.” (Doc. 2.00).

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

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. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.
9. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The ownership remark served its notice purpose. Ownership may be updated with the DNRC at any time.
2. The volume issue remark overcomes the prima facie status of claim 41I 49508-00. The evidence in the claim file supports the feasible volume of 97.05 acre-feet.

RECOMMENDATIONS

1. The volume of claim 41I 49508-00 should be reduced to 97.05 acre-feet.
2. The issue remarks should be removed from the claim.

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

Corbin Water Users Assn
% Ron Hagerty, Pres
940 State Highway 282
Clancy, MT 59634-9510

Potential Owner
Montana Tunnels Mining Inc
PO Box 176
Jefferson City, MT 59638-0176

Notice: Service List Updated 12.17.24

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

Water Right Number: 411 49508-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: CORBIN WATER USERS ASSN
% RON HAGERTY, PRES
PO BOX 103
JEFFERSON CITY, MT 59638

Priority Date: MARCH 2, 1881

Type of Historical Right: FILED

Purpose (Use): MULTIPLE DOMESTIC
WATER USERS ASSOCIATION

Flow Rate: 60.00 GPM

Volume: 97.05 AC-FT

Maximum Acres: 3.50

Source Name: SPRING, UNNAMED TRIBUTARY OF SPRING CREEK

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		SESESE	2	7N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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	0.50		SWSW	1	7N	4W	JEFFERSON
2	3.00		SESE	2	7N	4W	JEFFERSON
Total:	<u>3.50</u>						

THE PLACE OF USE IS THE CORBIN TOWNSITE.

Remarks:

AUTHORIZATION TO CHANGE (SEVER/SELL) THE POINT OF DIVERSION COMPLETED 11/30/1987 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.