

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**

CLAIMANT: Tommie R. Thompson

OBJECTOR: State of Montana Department of Fish, Wildlife & Parks

CASE 41I-1001-R-2024

41I 27392-00

41I 132381-00

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 132381-00 received an objection from the State of Montana, Department of Fish, Wildlife and Parks

(FWP). Both 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.

The above-captioned claims were consolidated into Case 41I-1001-R-2024 to resolve the objection and issue remarks.

FINDINGS OF FACT

1. Claim 41I 132381-00 received the following substantive issue remarks:
FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE LEWIS AND CLARK COUNTY WATER RESOURCES SURVEY (1957) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

Claim 41I 27392-00 received the following substantive issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

2. A Status Conference for Case 41I-1001-R-2024 was scheduled to take place on October 8, 2024, by telephone conference call. However, prior to the Status Conference taking place, the parties filed a *Stipulation*, and the Status Conference was vacated.

3. On September 12, 2024, objector FWP and claimant Tommie Thompson filed a *Stipulation* (Doc. 2.00)¹ The *Stipulation* proposes the following modifications to resolve the objection and issue remarks for claim 41I 132381-00:

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

AGREEMENTS

The parties to this Stipulation hereby stipulate and agree as follows:

5. The place of use shall be amended to read as follows:

<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		S2SE	15	11N	4W	LEWIS AND CLARK

Total: 30.00

6. The flow rate for claim 41I 132381-00 shall be amended from 1.5 CFS to 1.0 CFS, consistent with historic use.

7. The following issue remark, added by the Department of Natural Resources and Conservation shall be removed:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. THE LEWIS AND CLARK COUNTY WATER RESOURCES SURVEY (1957) APPEARS TO INDICATE 0.0 ACRES IRRIGATED.

4. On September 17, 2024, the Court issued an Order Setting Filing Deadline for claimant Tommie Thompson to file information or evidence addressing the issue remark appearing on claim 41I 27392-00.

5. On October 28, 2024, claimant Tommie Thompson filed a *Declaration* (Doc. 4.00)². The *Declaration* states that the flow rate of claim 41I 27392-00 should be modified to 35GPM as indicated by the issue remark.

PRINCIPLES OF LAW

1. 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.

2. 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.

3. 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.

² *Id.*

4. 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. Based on the information contained in the *Stipulation*, the proposed modifications should be made to claim 41I 132381-00 as described in Finding of Fact No. 3. These modifications resolve the FWP objection and issue remarks appearing on claim 41I 132381-00, and the issue remarks should be removed.

2. Based on the information contained in the *Declaration* of claimant Tommie Thompson, the flow rate of claim 41I 27392-00 should be reduced to 35GPM per Rule 17(c), W.R.Adj.R. and the issue remark should be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify the claims as described above and remove the issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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

Water Right Number: 411 27392-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TOMMIE R THOMPSON
4528 SILVER CREEK RD
HELENA, MT 59602-9009

Priority Date: MARCH 1, 1901

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 35.00 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		SWNE	22	11N	4W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			SWNE	22	11N	4W	LEWIS AND CLARK

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

Water Right Number: 411 132381-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: TOMMIE R THOMPSON
4528 SILVER CREEK RD
HELENA, MT 59602-9009

Priority Date: JUNE 1, 1876

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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: 30.00

Source Name: SILVER 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		SWSWNW	22	11N	4W	LEWIS AND CLARK

Period of Diversion: MARCH 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: CHEVALLIER DITCH

Period of Use: MARCH 1 TO OCTOBER 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		S2SE	15	11N	4W	LEWIS AND CLARK

Total: 30.00

Remarks:

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION ISSUED 08/11/1997. NOTICE OF COMPLETION DUE 12/31/2000. SEE 411 132381-00 .