

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (411)
PRELIMINARY DECREE

CLAIMANT: Brandborg Family Trust; Becky B. Simons Trust

CASE 411-1046-R-2024
411 128023-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 claim appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 411) issued on June 24, 2022. The claim 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.

The claim was consolidated into Case 41I-1046-R-2024 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remark.

FINDINGS OF FACT

1. Claim 41I 128023-00 received the following substantive issue remarks:
BASED ON A MEMORANDUM DATED 11/13/1998 IN THE CLAIM FILE THIS CLAIM APPEARS TO BE INCIDENTALY USED FOR WILDLIFE.
2. Currently, the abstract for claim 41I 128023-00 displays stock as the purpose of this claim. The Memo referenced in the above-listed issue remark indicates that a purpose remark could be added if it was agreeable to all parties. However, there is no indication in the claim file of any agreement between the parties to add wildlife as an incidental purpose and no modification to the purpose element was ever made to the claim.
3. On October 9, 2024, the Court consolidated claim 41I 128023-00 into case 41I-1046-R-2024 and set a filing deadline for the Claimants to respond if they agreed with the proposed modification to the purpose element. Nothing was filed by the ordered deadline.

PRINCIPLES OF LAW

1. 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.
2. 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.
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).

CONCLUSION OF LAW

1. The information in the record resolves issue remark appearing on claim 41I 128023-00. Because nothing was filed at the filing deadline by the Claimant, and the DNRC did not provide sufficient information supporting the issue remark, the issue remark does not overcome the prima facie status afforded the Statement of Claim for claim 41I 128023-00, and the issue remark should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusion of Law, this Master recommends that the Court remove the issue remark from the claim.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Brandborg Family Trust
Art M. & Anna Vee Brandborg Trustees
620 Fish Hatchery Rd
Hamilton, MT 59840

Becky B. Simons Trust
David Simons Trustee
125 Willow St
Salinas, CA 93901

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

Water Right Number: 411 128023-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRANDBORG FAMILY TRUST
ART M & ANNA VEE BRANDBORG TRUSTEES
620 FISH HATCHERY RD
HAMILTON, MT 59840-9022

SIMONS, BECKY B TRUST
DAVID SIMONS TRUSTEE
125 WILLOW ST
SALINAS, CA 93901

Priority Date: AUGUST 9, 1911

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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: UNNAMED TRIBUTARY OF SALT GULCH

Source Type: SURFACE WATER

ALSO KNOWN AS COTTONWOOD CREEK, SOUTH FORK.

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2	11	4N	1W	BROADWATER
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SESW	11	4N	1W	BROADWATER
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		S2NW	12	4N	1W	BROADWATER
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		SE	12	4N	1W	BROADWATER
Period of Diversion:	APRIL 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SW	12	4N	1W	BROADWATER

Period of Diversion: APRIL 1 TO NOVEMBER 30
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
6 NE 14 4N 1W BROADWATER

Period of Diversion: APRIL 1 TO NOVEMBER 30
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: APRIL 1 TO NOVEMBER 30

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			E2	11	4N	1W	BROADWATER
2			SESW	11	4N	1W	BROADWATER
3			S2NW	12	4N	1W	BROADWATER
4			SE	12	4N	1W	BROADWATER
5			SW	12	4N	1W	BROADWATER
6			NE	14	4N	1W	BROADWATER