

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**

CLAIMANTS: Arnold J. Kolberg; Sharon M. Lewis Revocable
Living Trust

CASE 41I-2031-R-2024
41I 6758-00

OBJECTORS: Michelle L. Gillespie; Rob Gillespie; Montana
State Board of Land Commissioners

NOTICE OF INTENT TO APPEAR: Michelle L. Gillespie

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 to 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

Water right claim 41I 6758-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received objections from Michelle Gillespie, Rob Gillespie, and the Montana State Board of Land Commissioners (SBLC). Michelle Gillespie also filed a notice of intent to appear (“NOIA”). The Water Court consolidated the claim into case 41I-2031-R-2024 to address the objections.

On July 29, 2024, Claimant Sharon M. Lewis Revocable Living Trust and Objector and NOIA Party Michelle L. Gillespie and Objector Rob Gillespie filed their Joint Verified Motion to Amend claim 41I 6758-00. Doc. 9.00.¹ Claimant Arnold Kolberg filed a response agreeing with the Motion to Amend. Doc. 11.00. Objector Montana State Board of Land Commissioners filed a response stating it does not oppose the Motion and that the requested amendment resolves SBLC’s objection in this case. Doc. 12.00.

FINDINGS OF FACT

1. Claim 41I 6758-00 should be modified as follows as requested by the Claimants:

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			NENWNW	15	4N	2E	BROADWATER
2			NENENW	16	4N	2E	BROADWATER
3			NENENE	21	4N	2E	BROADWATER

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the

¹ “Doc.” refers to the docket number of a document filed in the Water Court’s Full Court Enterprise Case Management system.

water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The correction to claim 41I 6758-00 described above is a reduction to the claim and is accepted by the Court. The objections and NOIA are resolved by this correction.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the claim as described above.

An abstract reflecting the recommended change is attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Arnold J. Kolberg
66 Lone Mountain Road
Toston, MT 59643-9745

Service via Electronic Mail:

Aislinn Brown
Agency Legal Services Bureau
PO Box 201440
Helena MT 59620-1440
(406) 444-5857
blewatercourt@mt.gov
Aislinn.brown@mt.gov

Service via Electronic Mail:

Montana DOJ
Terisa Oomens, Agency Legal Counsel
Agency Legal Services Bureau
PO Box 201440
Helena, MT 59620-7375
Phone: 406-444-4303
Terisa.Oomens@mt.gov
kayla.churchill@mt.gov

Abigail R Brown
Betsy R Story
Parsons Behle & Latimer
PO Box 104
Helena, MT 59624
406-410-5050 Main
ecf@parsonsbehle.com
abbybrown@parsonsbehle.com
bsstory@parsonsbehle.com
(atty Sharon Lewis Trust & Gillespies)

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

Water Right Number: 411 6758-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ARNOLD J KOLBERG
66 LONE MOUNTAIN RD
TOSTON, MT 59643-9745

LEWIS, SHARON M REVOCABLE LIVING TRUST
81 LEWIS KITTO LN
TOSTON, MT 59643-9744

Priority Date: JANUARY 9, 1963

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 5.00 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		NENENE	16	4N	2E	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 31

Diversion Means: WELL

Period of Use: APRIL 15 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			NENWNW	15	4N	2E	BROADWATER
2			NENENE	21	4N	2E	BROADWATER