

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: Rueben F. Gingerich

CASE 41I-2052-R-2024
41I 6755-00

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 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 6755-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received an issue remark from the Department of Natural Resources and Conservation (“DNRC”) raising potential legal or factual issues with the claim. The Water Court consolidated the claim into case 41I-2052-R-2024 to address the remark.

On September 3, 2024, Claimant Rueben Gingerich filed an Amendment to Statement of Claim to resolve the issue remark on the claim.

FINDINGS OF FACT

Domestic claim 41I 6755-00 appeared in the Preliminary Decree with a volume of .4 acre-feet per year and the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

Pursuant the Claimant’s Motion to Amend, and consistent with DNRC guidelines for domestic claims, the claim should be corrected as follows:

Volume: ~~.4 AC-FT~~
 1.5 AC-FT

PRINCIPLES OF LAW

1. 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 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.

2. 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.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The claim should be modified as described above. This modification resolves the issue remark on the claim.

RECOMMENDATIONS

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

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

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Rueben F Gingerich
97 Antler Ln
Toston, MT 59643-9607

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

Water Right Number: 411 6755-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RUEBEN F GINGERICH
97 ANTLER LN
TOSTON, MT 59643-9607

Priority Date: DECEMBER 31, 1878

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 1.50 AC-FT

Households: 1

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		SENWNW	4	5N	2E	BROADWATER

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			SENWNW	4	5N	2E	BROADWATER

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

6755-00 6760-00