

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: Winston Livestock Co.

**CASE 41I-0070-R-2025**

41I 89171-00

OBJECTOR: Unites States of America Bureau of Land  
Management

**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 89171-00 appeared in the Preliminary Decree for the Missouri River Above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Winston Livestock. The United States, DOI Bureau of Land Management objected to the claim. The claim also received a notice-type 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.

### FINDINGS OF FACT

1. Claim 41I 89171-00 was decreed as a claim for sprinkler/flood irrigation of 680.50 acres. The United States objected to the claim, stating:

Place of use ID No. 13 as described includes federal land managed by Bureau of Land Management (BLM). There is no special use permit to irrigate federal land. BLM's objection would be resolved by refinement of place of use ID No. 13 to remove federal land in the S2NW and NWNW Section 20, Township 9N, Range 1W, Broadwater County with a corresponding readjustment of acreage.

2. On June 3, 2025, the parties filed their *Stipulation to Resolve Objections*. (Doc. 5.00).

3. The *Stipulation* proposes the following modification to claim 41I 89171-00:

1. The place of use ID No. 13 for Water Right Claim No. 41I 89171-00 should be amended as follows:

<u>ID</u>	<u>Acre</u> s	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
13	56.25		NW	20	<u>8N</u> 9N	1E	BROADWATER

4. The NW of Section 20 was originally claimed in Township 8N, Range 1E, Broadwater County.

5. It is unclear from the claim file when the Township was modified to 9N, but it appears to be a clerical error.

6. Claim 41I 89171-00 also received the following notice-type issue remark:

DITCH NAME AND POINT OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

7. This remark served its notice purpose.

# 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.

## CONCLUSIONS OF LAW

1. The objection overcomes the prima facie status of claim 41I 89171-00. The evidence in the *Stipulation* and the claim file shows the place of use in the NW of Section 20 is in Township **8N**, Range 1E, Broadwater County.
2. The notice-type issue remark served its notice purpose.

## RECOMMENDATIONS

1. The place of use for claim 41I 89171-00 should be modified as follows:

2. The issue remark should be removed from the claim abstract.

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:**

Winston Livestock Co.  
6547 US Hwy 287  
Winston, MT 59647

**Service Via Electronic Mail:**

Michelle Ramus, Trial Attorney  
NRS-ENRD-US DOJ  
Michelle.ramus@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

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

**Water Right Number:** 41I 89171-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** WINSTON LIVESTOCK CO  
6547 US HWY 287  
WINSTON, MT 59647

**Priority Date:** AUGUST 1, 1866

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 368.02 GPM

**\*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:** 680.50

**Source Name:** BEAVER 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		SWSWSW	1	8N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	DIEHL DITCH					
2		NESWSW	1	8N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	DIEHL DITCH					
3		SENWSW	1	8N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	DIEHL DITCH					
4		SENENW	1	8N	1W	BROADWATER
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	REYNOLDS DITCH					
<b>Period of Use:</b>	APRIL 15 TO OCTOBER 15					

**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	20.00		W2NE	6	8N	1E	BROADWATER
2	25.00		NENW	6	8N	1E	BROADWATER
3	4.50		NWNW	6	8N	1E	BROADWATER
4	35.75		SESW	6	8N	1E	BROADWATER
5	18.75		SWNW	6	8N	1E	BROADWATER
6	32.00		NESW	6	8N	1E	BROADWATER
7	6.25		N2SESW	6	8N	1E	BROADWATER
8	6.25		SWNW	17	8N	1E	BROADWATER
9	15.75		NESW	17	8N	1E	BROADWATER
10	23.75		NWSW	17	8N	1E	BROADWATER
11	13.75		SESW	17	8N	1E	BROADWATER
12	30.75		SWSW	17	8N	1E	BROADWATER
13	56.25		NW	20	8N	1E	BROADWATER
14	48.00		SW	29	9N	1E	BROADWATER
15	38.75		SWSW	29	9N	1E	BROADWATER
16	20.75		NENE	31	9N	1E	BROADWATER
17	30.75		SENE	31	9N	1E	BROADWATER
18	7.50		SWNE	31	9N	1E	BROADWATER
19	4.50		SWNW	31	9N	1E	BROADWATER
20	7.00		NESE	31	9N	1E	BROADWATER
21	31.25		NWSE	31	9N	1E	BROADWATER
22	2.50		SESE	31	9N	1E	BROADWATER
23	20.75		SWSE	31	9N	1E	BROADWATER
24	36.25		NESW	31	9N	1E	BROADWATER
25	9.50		SESW	31	9N	1E	BROADWATER
26	28.75		NENW	32	9N	1E	BROADWATER
27	40.00		NWNW	32	9N	1E	BROADWATER
28	14.50		SESW	32	9N	1E	BROADWATER
29	25.75		SWNW	32	9N	1E	BROADWATER
30	12.00		NESW	32	9N	1E	BROADWATER
31	11.25		NWSW	32	9N	1E	BROADWATER
32	2.00		NESWSW	32	9N	1E	BROADWATER
<b>Total:</b>	<b>680.50</b>						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

89168-00      89169-00      89170-00      89171-00      89172-00      89173-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 03/12/1991: MAXIMUM ACRES, FLOW RATE, PERIOD OF USE.