

Montana Water Court
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FILED
06/11/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-0119-R-2024
Lockman, Melissa
14.00

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

* * * * *

CLAIMANTS: N & R Corporation; NR & EJ Limited
Partnership

CASE 41I-0119-R-2024
41I 89369-00
41I 89370-00
41I 130065-00

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. Claims 41I 89369-00 and 41I-89370-00 are owned by NR & EJ Limited Partnership and N & R Corporation. Claim 41I 130065-00 is owned by NR & EJ Limited Partnership. These claims 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.

FINDINGS OF FACT

41I 89369-00

1. Claim 41I 89369-00 was decreed as a sprinkler irrigation claim that diverts water from an unnamed tributary of Buffalo Creek with the following place of use:

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		W2SE	32	9N	4W	JEFFERSON
Total:	20.00						

2. The claim received the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
THE JEFFERSON COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 0.00
ACRES IRRIGATED.

3. On May 12, 2025, Claimants withdrew claim 41I 89369-00. (Doc.¹ 13.00).

41I 89370-00

4. Claim 41I 89370-00 was decreed as a sprinkler/flood irrigation claim that diverts water from Buffalo Creek. The claim received the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
THE JEFFERSON COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 0.00
ACRES IRRIGATED.

5. The place of use for claim 41I 89370-00 was adjudicated during the Basin 41I Temporary Preliminary Decree. In the Master's Report for Case 41I-172, the Court found:

6 The following changes should be made to the maximum
acres, point of diversion and place of use of claim 41I-W-089370-00
as specified in the Stipulation

MAXIMUM ACRES 113 00

PLACE OF USE FOR IRRIGATION

	<u>ACRES</u>	<u>QTR</u>	<u>SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
001	40 00	N2N2N2	05	08N	04W	JEFFERSON	
002	4 00	N2NE	01	08N	05W	JEFFERSON	
003	51 00	S2S2	31	09N	04W	JEFFERSON	
004	18 00	S2S2	32	09N	04W	JEFFERSON	
TOTAL	113 00						

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

6. Claim 41I 89370-00 also received the following notice-type issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON BUFFALO CREEK WITH A PRIORITY DATE PREDATING CASE NO 668, LEWIS AND CLARK COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

7. No one objected to claim 41I 89370-00, and the remark served its notice purpose.

41I 130065-00

8. Claim 130065-00 was decreed as a flood irrigation claim from several undeveloped springs and a reservoir in Section 4, T8N, R4W, Jefferson County.

9. The claim received the following issue remarks:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A DAM.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA. THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

SCS AERIAL PHOTOGRAPH NO. 10950 E-115-10, DATED 5/28/47, SHOWS EVIDENCE OF A FLOOD DITCH SYSTEM. THE SOURCE OF WATER IS A SPRING. THE SYSTEM VISIBLE ON THE PHOTOGRAPH APPEARS CAPABLE OF IRRIGATING 25.0 ACRES.

10. On May 12, 2025, Claimants withdrew claim 41I 130065-00. (Doc. 13.00).

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.

8. 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

41I 89369-00

1. Claim 41I 89369-00 should be dismissed as requested by Claimants.

41I 89370-00

2. The issue remarks do not overcome the prima facie status of claim 41I 89370-00. The Water Court previously adjudicated the place of use and flow rate for claim 41I 89370-00.

3. The notice-type issue remark served its notice purpose.

41I 130065-00

4. Claim 41I 130065-00 should be dismissed as requested by Claimants.

RECOMMENDATIONS

1. Claims 41I 89369-00 and 41I 130065-00 should be dismissed.

2. The issue remarks should be removed from claim 41I- 89370-00.

A post decree abstract of each water right claim reflecting these recommendations are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA ELECTRONIC MAIL

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

Water Right Number: 41I 89369-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: N & R CORPORATION
PO BOX 1715
33 LAST CHANCE GULCH
HELENA, MT 59624

NR & EJ LIMITED PARTNERSHIP
PO BOX 1715
33 LAST CHANCE GULCH
HELENA, MT 59624

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF BUFFALO CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 411 89370-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: N & R CORPORATION
PO BOX 1715
33 LAST CHANCE GULCH
HELENA, MT 59624

NR & EJ LIMITED PARTNERSHIP
PO BOX 1715
33 LAST CHANCE GULCH
HELENA, MT 59624

Priority Date: MAY 15, 1909

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 394.94 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 113.00

***Source Name:** BUFFALO 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		NWNENE	1	8N	5W	JEFFERSON

Period of Diversion: MAY 15 TO AUGUST 15

Diversion Means: HEADGATE

2		SESESE	31	9N	4W	JEFFERSON
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Period of Diversion: MAY 15 TO AUGUST 15

Diversion Means: HEADGATE

Period of Use: MAY 15 TO AUGUST 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	40.00		N2N2N2	5	8N	4W	JEFFERSON
2	4.00		N2NE	1	8N	5W	JEFFERSON
3	51.00		S2S2	31	9N	4W	JEFFERSON
4	18.00		S2S2	32	9N	4W	JEFFERSON

Total: 113.00

Remarks:

PLACE OF USE 001 IS LIMITED TO PRIVATE LAND OWNED BY THE OWNER OF CLAIM NO. 41I 89370-00 WITHIN HES 297 (4.67 ACRES) AND HES 45 (35 ACRES).

PLACE OF USE 002 IS LIMITED TO PRIVATE LAND OWNED BY THE OWNER OF CLAIM NO. 41I 89370-00 WITHIN HES 49, TRACTS A AND B.

PLACE OF USE 003 IS LIMITED TO PRIVATE LAND OWNED BY THE OWNER OF CLAIM NO. 41I 89370-00 WITHIN HES 49, TRACTS A AND B AND WITHIN HES 543, TRACTS A AND B.

PLACE OF USE 004 IS LIMITED TO PRIVATE LAND OWNED BY THE OWNER OF CLAIM NO. 41I 89370-00 WITHIN HES 45 AND HES 543, TRACT 5.

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

Water Right Number: 41I 130065-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: NR & EJ LIMITED PARTNERSHIP
PO BOX 1715
33 LAST CHANCE GULCH
HELENA, MT 59624

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF BUFFALO CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.