

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

* * * * *

CLAIMANTS: Jason Lacross; Jennifer Lacross; Sally Jo Ryan

CASE 41I-1022-R-2024

41I 143545-00

41I 143548-00

41I 143553-00

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 water rights listed above appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The above-captioned claims each received issue remarks identifying potential legal or factual issues with the water right. The Water Court is required to address these issue remarks.

The claims were consolidated into Case 41I-1022-R-2024 and an Order Requiring the Claimants to work with the DNRC was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Each of the above-captioned claims received the following substantive issue remarks:

41I 143545-00

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE GALLATIN COUNTY WATER RESOURCES SURVEY (1953) APPEARS TO INDICATE 10.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1, 2 AND 3 COULD NOT BE REFINED TO A TEN ACRE DESCRIPTION FROM INFORMATION IN THE FILE. THE CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.

41I 143548-00

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE GALLATIN COUNTY WATER RESOURCES SURVEY (1953) APPEARS TO INDICATE 9.0 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

41I 143553-00

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

2. On September 13, 2024, the Court consolidated the claims and issued an order for the Claimants to work with the DNRC to address and resolve the issue remarks.

3. On November 25, 2024, Benjamin Sudduth filed a Notice of Appearance on behalf of Claimants Jason and Jennifer Lacross.

4. On December 11, 2024, DNRC Water Resource Specialist Jason Larsen filed a *Memorandum* in this matter. Mr. Larsen states that at the time of filing the *Memo*, the DNRC had not received any claimant contact. Further, the DNRC notes that based on the information in the claim file the DNRC made recommendation for modifications to

the claims to address and resolve the issue remarks. Those recommendations are as follows:

For claim 41I 143545-00 the DNRC recommends changing the maximum acres to 43.00 acres. The DNRC also recommends reducing the flow rate to 1.63 CFS, based on the 17 gpm per acre standard. The DNRC recommends removing the P235 issue remark and the F180 Issue remark.

For claim 41I 143545-00 the DNRC recommends changing the legal land description of point of diversion #1 from E2NE to SWNE, changing the legal land description of point of diversion #2 from S2S2 to NWSESE, and removing the PDIS issue remark. (See Figure 5 of Appendix A, marked up review abstract for changes).

For claim 41I 143548-00 the DNRC recommends leaving the maximum acres as is and removing the P235 issue remark and the F180 Issue remark.

For claim 41I 143548-00 the DNRC recommends no changes to the legal land description for the point of diversion. The DNRC recommends removing the P49 issue remark. (See Figure 6 of Appendix A, marked up review abstract for changes).

For claim 41I 143553-00, because there is no documentation to support the claimed flow rate, the DNRC recommends changing the flow rate to 35 GPM, and removing the F205 issue remark. (See Figure 7 of Appendix A, marked up review abstract for changes).

5. On December 23, 2024, the Court issued an Order Setting Filing Deadline for the Claimants to file a statement if they disagreed with the above-listed recommendations from the DNRC. Nothing was filed at the deadline by Claimant Sally Jo Ryan. Claimants Jason and Jennifer Lacross (“Lacrosses”) filed a *Request for Extension of Time* to respond to the *Memo*.

6. On April 9, 2025, the Lacrosses filed a *Response* to the DNRC’s December 11, 2025 *Memo*. In their response, the Claimants state multiple disagreements with the recommendation provided in the *Memo*. First, the Lacrosses disagree with the recommendation to reduce the acres irrigated and flow rate of claim 41I 143545-00. The Claimants base their disagreement on the credibility of the evidence provided by the DNRC to substantiate the place of use and acres irrigated issue remark noting that the *Memo* itself states with regard to the 1954 WRS photo examined and the 1979 USDA photo that, “it is difficult to determine if those fields were irrigated, in part because the photos were taken in September and also because portions of the photos are somewhat

washed out (especially the 1954 photo).” Based on this information, the Lacrosses assert that the issue remark does not overcome the Prima Facie status afforded the Statement of Claim for claim 41I 143545-00. The Lacrosses do, however, agree with the recommendation to modify the points of diversion for claim 41I 143545-00.

Second, the Lacrosses note that they agree with the recommendation to remove the issue remarks from claim 41I 143548-00 leaving the elements as they appear on the abstract. Further, the Lacrosses state that as to the means of diversion for claim 41I 143548-00, “headgate” is an accurate description and reiterate that no corrections to claim 41I 143548-00 are necessary.

Finally, the Lacrosses state their disagreement with the DNRC assertion that there is “no information that corroborates the claimed flow rate for claim 41I 143553-00.” The Lacrosses base their disagreement on the fact that the Statement of Claim for claim 41I 143553-00 identifies the well at issue as “Brainard Well No. 2,” and that the declaration of vested groundwater rights form filed in support of the Statement of Claim states “65.00 gpm for No. 2.” Based on this information, the Lacrosses assert that the flow rate of claim 41I 143553-00 should remain as it was decreed, and the issue remark should be removed.

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. 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.

3. 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.

4. 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.

5. 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).

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the substantive issue remarks appearing on each of the above-captioned claims. Based on the information contained in the *Response* filed on April 9, 2025, by the Lacrosses, the flow rate and acres irrigated issue remark appearing on claim 41I 143545-00 and the flow rate issue remark appearing on claim 41I 143553-00 do not overcome the Prima Facie status afforded the Statements of Claim. Those substantive issue remarks should be removed from the claims.

2. Based on the information contained in the DNRC *Memo* and the *Response* filed by the Lacrosses, the points of diversion for claim 41I 143545-00 should be modified as described in Finding of Fact No. 3. and the point of diversion issue remark should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify claim 41I 143545-00 as described above and remove all issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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Service Via Electronic Mail:

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\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Data\vol)\Share\WC-BASIN FOLDERS\411 PD\411 Cases\1022\411-1022-R-2024 MR (multiple claims, response filed to 248 memo, make some changes per memo but dont agree with others) 6-3-25 jbc.docx

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

Water Right Number: 41I 143545-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JASON LACROSS
6760 SYPES CANYON RD
BOZEMAN, MT 59715

JENNIFER LACROSS
6760 SYPES CANYON RD
BOZEMAN, MT 59715-7797

SALLY JO RYAN
4311 50TH AVE NE
SEATTLE, WA 98105

Priority Date: JUNE 1, 1906

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.42 CFS

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 64.00

Source Name: SIXTEENMILE 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		SWNE	14	4N	4E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 1					
Diversion Means:	HEADGATE					
2		NWSE	12	4N	4E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 1					
Diversion Means:	HEADGATE					
3		NWNWNW	13	4N	4E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 1					
Diversion Means:	HEADGATE					
Period of Use:	APRIL 1 TO OCTOBER 1					

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	42.00		NW	13	4N	4E	GALLATIN
2	22.00		E2NE	14	4N	4E	GALLATIN
Total:	64.00						

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.

143545-00 143560-00

THE PLACE OF USE WAS AMENDED BY THE CLAIMANT ON 05/09/1989.

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

Water Right Number: 411 143548-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JASON LACROSS
6760 SYPES CANYON RD
BOZEMAN, MT 59715

JENNIFER LACROSS
6760 SYPES CANYON RD
BOZEMAN, MT 59715-7797

SALLY JO RYAN
4311 50TH AVE NE
SEATTLE, WA 98105

Priority Date: APRIL 15, 1892

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.50 CFS

***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: 41.00

Source Name: UNNAMED TRIBUTARY OF SIXTEENMILE 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		SESWW	13	4N	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 1

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	41.00		W2	13	4N	4E	GALLATIN

Total: 41.00

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.

143548-00

143562-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/09/1989: MAXIMUM ACRES, PLACE OF USE.

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

Water Right Number: 41I 143553-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JASON LACROSS
6760 SYPES CANYON RD
BOZEMAN, MT 59715

JENNIFER LACROSS
6760 SYPES CANYON RD
BOZEMAN, MT 59715-7797

SALLY JO RYAN
4311 50TH AVE NE
SEATTLE, WA 98105

Priority Date: JULY 3, 1961

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 65.00 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		NWNENW	13	4N	4E	GALLATIN

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			NWNENW	13	4N	4E	GALLATIN