

Montana Water Court
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FILED
03/20/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-0045-R-2023
Lockman, Melissa
18.00

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

* * * * *

CLAIMANTS: Joseph Jr. & Kathy S. Brummer Living Trust;
Amanda W. Domino; James P. Domino; ML Bar
Ranch LLC

OBJECTOR: City of Townsend

CASE 41I-0045-R-2023
41I 128108-00
41I 128109-00
41I 128110-00

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. The claims received

objections from the City of Townsend. The claims also 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

1. On November 12, 2024, the City of Townsend withdrew their objections to claims 41I 128108-00, 41I 128109-00, and 41I 128110-00.¹ (Doc. 17.00).

2. Claims 41I 128108-00, 41I 128109-00, and 41I 128110-00 were decreed as claims for flood irrigation of the same 120.00-acre place of use, described as:

Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	28.00		S2SE	28	7N	3E	BROADWATER
2	30.00		S2SW	28	7N	3E	BROADWATER
3	32.00		N2NE	33	7N	3E	BROADWATER
4	30.00		N2NW	33	7N	3E	BROADWATER
Total:	120.00						

3. All three claims received the following issue remarks:

THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 91.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

4. The map attached to the statement of claim showed the place of use as follows:



5. The 91.00 acres verified by the DNRC, based on the 1956 Water Resources Survey, were described as:

data source # 2: Broadwater WRS				date: 1956				
	ACRES	LOT	BLK	QTR SEC	SEC	TWP	RGE	CNTY
001	5.00	(GOVT)	000 000	N2NE	33	07N	03E	BR
002	33.00	(GOVT)	000 000	N2NW	33	07N	03E	BR
003	23.00	(GOVT)	000 000	S2SW	28	07N	03E	BR
004	30.00	(GOVT)	000 000	S2SE	28	07N	03E	BR
Total	91.00							
comments:								

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

6. On November 12, 2024, Claimant ML Bar Ranch, LLC (“ML Bar”) filed evidence addressing the issue remarks. (Doc. 16.00).

5. ML Bar’s filing included a memorandum from Myles VanHemelryck of H2O Consulting LLC. (Doc. 16.00, Exhibit B). Mr. VanHemelryck is a former DNRC water rights specialist, and he reviewed the claimed place of use for these claims.

6. Mr. VanHemelryck confirmed 56.70 irrigated acres in Section 33, T7N, R3E on a 1955 aerial photograph. *Id.*

7. Mr. VanHemelryck also confirmed 63.84 irrigated acres in Section 28, T7N, R3E in the same 1955 aerial photograph. *Id.*

8. In total, Mr. VanHemelryck confirmed 120.54 irrigated acres within the claimed place of use in the 1955 aerial photograph.

9. Claim 41I 128108-00 also received the following notice-type issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON DEEP CREEK WITH A PRIORITY DATE PREDATING CASE NO 465, MEAGHER 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.

10. No one objected to the priority date of claim 41I 128108-00. The 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.

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

1. The City's withdrawal of their objections resolves the objections to claims 41I 128108-00, 41I 128109-00, and 41I 128110-00.

2. The place of use issue remarks overcome the prima facie status of claims 41I 128108-00, 41I 128109-00, and 41I 128110-00. However, Claimant provided evidence showing the entire place of use was irrigated prior to July 1, 1973. This evidence is sufficient to rebut the issue remarks.

3. The notice-type issue remark on claim 41I 128108-00 served its notice purpose.

RECOMMENDATIONS

1. The elements of claims 41I 128108-00, 41I 128109-00, and 41I 128110-00 should remain as they appeared in the Basin 41I Preliminary Decree.

2. The issue remarks should be removed from the claim abstracts.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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

Water Right Number: 41I 128108-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners:

AMANDA W DOMINO
29 SPUR DRIVE
TOWNSEND, MT 59644

JAMES P DOMINO
29 SPUR DRIVE
TOWNSEND, MT 59644

BRUMMER, JOSEPH JR & KATHY S LIVING TRUST
PO BOX 1083
TOWNSEND, MT 59644-1083

ML BAR RANCH LLC
8818 STABLE CREST BLVD
HOUSTON, TX 77024-7034

Priority Date: MAY 1, 1879

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.55 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: 120.00

Source Name: DEEP 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		NENWNE	33	7N	3E	BROADWATER
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	PUMP					
2		NENWNW	34	7N	3E	BROADWATER
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	BROGAN-BALLARD DITCH					
3		SESWSW	25	7N	3E	BROADWATER
Period of Diversion:	APRIL 15 TO OCTOBER 15					

Diversion Means:

HEADGATE

Ditch Name:

BROGAN-BALLARD-JACOBSON-WARD DITCH

4

SWSESW

28

7N

3E

BROADWATER

Period of Diversion:

APRIL 15 TO OCTOBER 15

Diversion Means:

PUMP

Period of Use:

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	28.00		S2SE	28	7N	3E	BROADWATER
2	30.00		S2SW	28	7N	3E	BROADWATER
3	32.00		N2NE	33	7N	3E	BROADWATER
4	30.00		N2NW	33	7N	3E	BROADWATER
Total:	120.00						

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.

128108-00

128109-00

128110-00

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

Water Right Number: 41I 128109-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners:

AMANDA W DOMINO
29 SPUR DRIVE
TOWNSEND, MT 59644

JAMES P DOMINO
29 SPUR DRIVE
TOWNSEND, MT 59644

BRUMMER, JOSEPH JR & KATHY S LIVING TRUST
PO BOX 1083
TOWNSEND, MT 59644-1083

ML BAR RANCH LLC
8818 STABLE CREST BLVD
HOUSTON, TX 77024-7034

TRANSFER PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

Priority Date: APRIL 1, 1885

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 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: 120.00

Source Name: DEEP 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		NENWNE	33	7N	3E	BROADWATER
Period of Diversion:		APRIL 15 TO OCTOBER 15				
Diversion Means:		PUMP				
2		NENWNW	34	7N	3E	BROADWATER
Period of Diversion:		APRIL 15 TO OCTOBER 15				
Diversion Means:		HEADGATE				
Ditch Name:		BROGAN-BALLARD DITCH				
3		SESWE	25	7N	3E	BROADWATER

Period of Diversion:

APRIL 15 TO OCTOBER 15

Diversion Means:

HEADGATE

Ditch Name:

BROGAN-BALLARD-JACOBSON-WARD DITCH

4

SWSESW

28

7N

3E

BROADWATER

Period of Diversion:

APRIL 15 TO OCTOBER 15

Diversion Means:

PUMP

Period of Use:

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	28.00		S2SE	28	7N	3E	BROADWATER
2	30.00		S2SW	28	7N	3E	BROADWATER
3	32.00		N2NE	33	7N	3E	BROADWATER
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Total:	120.00						

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128108-00

128109-00

128110-00

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

Water Right Number: 41I 128110-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners:

AMANDA W DOMINO
29 SPUR DRIVE
TOWNSEND, MT 59644

JAMES P DOMINO
29 SPUR DRIVE
TOWNSEND, MT 59644

BRUMMER, JOSEPH JR & KATHY S LIVING TRUST
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ML BAR RANCH LLC
8818 STABLE CREST BLVD
HOUSTON, TX 77024-7034

TRANSFER PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

Priority Date: OCTOBER 31, 1879

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 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: 120.00

Source Name: DEEP 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		NENWNE	33	7N	3E	BROADWATER
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Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	BROGAN-BALLARD DITCH					
3		SESWSE	25	7N	3E	BROADWATER

Period of Diversion:

APRIL 15 TO OCTOBER 15

Diversion Means:

HEADGATE

Ditch Name:

BROGAN-BALLARD-JACOBSON-WARD DITCH

4

SWSESW

28

7N

3E

BROADWATER

Period of Diversion:

APRIL 15 TO OCTOBER 15

Diversion Means:

PUMP

Period of Use:

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	28.00		S2SE	28	7N	3E	BROADWATER
2	30.00		S2SW	28	7N	3E	BROADWATER
3	32.00		N2NE	33	7N	3E	BROADWATER
4	30.00		N2NW	33	7N	3E	BROADWATER
Total:	120.00						

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128108-00

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