

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**

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CLAIMANT: Hidden Hollow Hideaway Ranch Inc.

OBJECTORS: United States of America (Bureau of Land  
Management)

NOTICE OF INTENT TO APPEAR: Thomas F. Odonnell

**CASE 41I-0081-R-2023**

41I 46192-00

41I 49382-00

**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

Claims 41I 46192-00 and 41I 49382-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claims are owned by Hidden Hollow Hideaway Ranch Inc. ("Hidden Hollow"). The United States Department of Interior, Bureau of Land Management ("BLM") objected to both claims. Thomas F. O'Donnell ("O'Donnell") filed a notice of intent to appear on claim 41I 49382-00. Both claims were decreed with issue remarks.

### FINDINGS OF FACT

#### **41I 46192-00**

##### *BLM Objection*

1. Claim 41I 46192-00 was decreed as a placer mining claim for 2.50 CFS from Woods Creek.

2. The place of use was decreed as:

Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SWNW	2	9N	2E	BROADWATER
2			NE	3	9N	2E	BROADWATER
3			NW	3	9N	2E	BROADWATER
4			N2N2S2	3	9N	2E	BROADWATER
5			SW	35	10N	2E	BROADWATER

3. The BLM objected to claim 41I 46192-00, stating:

Place of use ID Nos. 2, 3, 4, & 5 as described include federal land managed by the Bureau of Land Management (BLM). BLM's objection would be resolved by refinement of the place of use and/or addition of an information remark stating that the place of use does not include federal land in the W2 and NE Section 3, Township 9N, Range 2E and SW Section 35, Township 10N, Range 2E, all in Broadwater County. A proposed abstract showing the proposed remark is attached.

4. The BLM and Hidden Hollow filed a stipulation resolving the BLM's objections. (Doc.<sup>1</sup> 6.00). The stipulation requests the following information remark be added to the claim abstract:

Place of Use Information Remark: THE PLACE OF USE IS LIMITED TO MINERAL ENTRY NO. 34/ MINERAL SURVEY NO. 37 (BUTTERFIELD PLACER) AND MINERAL SURVEY NO. 8816 (LOWER ELDORADO BAR PLACER)

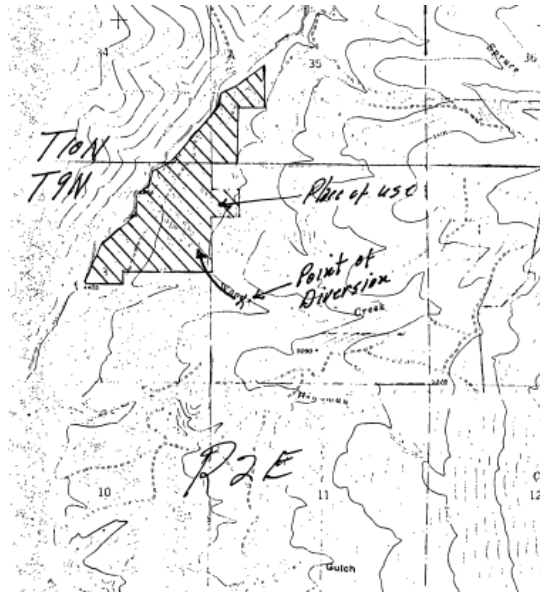
##### *Motion to Amend*

5. Claim 41I 46192-00 was decreed with its point of diversion as a headgate in the NWNWSW §2 T9N R2E.

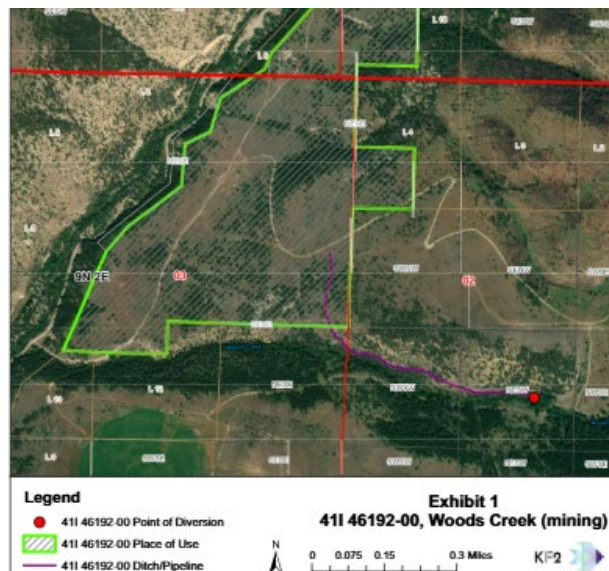
6. The map attached to the statement of claim shows the point of diversion as:

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



7. Hidden Hollow filed a motion to amend the point of diversion for claim 41I 46192-00 to the SENESW §2 T9N R2E. (Doc. 5.00). In support of its motion, Hidden Hollow provided a contemporary map showing the point of diversion in the SENESW §2 T9N R2E:



8. The location of the point of diversion on this map is nearly identical to the location of the point of diversion on the statement of claim map.

9. Hidden Hollow owns both the NWNWSW §2 T9N R2E and the SENESW §2 T9N R2E.

*Issue Remarks*

10. Claim 41I 46192-00 was decreed with the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE ESTIMATED AVERAGE ANNUAL FLOW OF THE SOURCE (.88 CFS).

DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 100 GPM.

11. The statement of claim originally claimed a flow rate of 150.00 miner's inches (3.75 CFS).

12. During its initial review of the claim, the DNRC added the flow rate remarks described above. These remarks appeared on the claim in the Basin 41I Temporary Preliminary Decree ("TPD").

13. The Montana Department of Fish, Wildlife, and Parks ("FWP") objected to claim 41I 46192-00 in the Basin 41I TPD. Donald C. Marks filed a notice of intent to appear on claim 41I 46192-00 in the Basin 41I TPD. The claim was consolidated into Water Court Case 41I-411.

14. The parties filed a stipulation in Case 41I-411 resolving the objection and notice of intent to appear. The stipulation reduced the flow rate of claim 41I 46192-00 to 2.50 CFS and added limiting information remarks to the volume.

15. A Master's Report was filed in Case 41I-411 on October 6, 1998. The Master's Report was amended on February 10, 1999, pursuant to a joint objection from the parties. The objection was related to specific language in the Master's Report and did not impact the modifications made to the claim elements. The amended Master's Report was adopted by the Court on May 6, 1999.

16. Although the flow rate was litigated during the Basin 41I TPD, the issue remarks remain on the claim abstract and were decreed in the Basin 41I Preliminary Decree.

17. Finally, claim 41I 46192-00 received the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON WOODS CREEK WITH A PRIORITY DATE PREDATING CASE NO 1918-1931, BROADWATER 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.

#### **41I 49382-00**

##### *BLM Objection*

18. Claim 41I 49382-00 was decreed as a sprinkler/flood irrigation claim for 2.00 CFS from Woods Creek.

19. The place of use was decreed as 29.00 acres in the S2 §3 T9N R2E.

20. The BLM objected to claim 41I 49382-00, stating:

Place of use as described includes federal land managed by Bureau of Land Management (BLM). There is no special use permit to irrigate federal land. Refinement of the place of use to remove federal land in the W2SW Section 3, Township 9N, Range 2W, Broadwater County will resolve BLM's objections.

21. The stipulation filed by the BLM and Hidden Hollow proposes the following modifications to resolve the objection:

*Place of Use:										
ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County			
1	27.50	29.00								
2		1.50	9	W2SE	3	9N	2E	BROADWATER		
				NESE	3	9N	2E	BROADWATER		
Total:		29.00								

*Issue Remarks*

22. Claim 41I 49382-00 was decreed with the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.  
 THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 25.84 GPM PER ACRE.  
 USDA AERIAL PHOTOGRAPH NO(S). 379-173 , DATED 08/28/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.  
 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. THE RIGHT APPEARS TO HAVE LAST BEEN USED IN 1959.

23. Claim 41I 49382-00 is a decreed right, based on the 80.00 miner's inches decreed to Charles Matthews by the Broadwater County District Court. The relevant portion of the decree was attached to the statement of claim.

24. Claim 41I 49382-00 appeared in the Basin 41I TPD with the same issue remarks that were decreed in the Basin 41I Preliminary Decree.

25. During the Basin 41I TPD, Donald C. Marks objected to claim 41I 49382-00 based on place of use, maximum acres, and abandonment. The claim was consolidated into Water Court Case 41I-408.

26. Donald C. Marks and Hidden Hollow filed a stipulation in Case 41I-408 reducing the place of use from 35.00 acres to 29.00 acres.

27. On April 9, 1998, the Court issued a Master's Report accepting the stipulation and modifying the place of use as requested. The Master's Report was adopted on May 8, 1998.

*O'Donnell NOIA*

28. O'Donnell filed a notice of intent to appear on claim 41I 49382-00, stating:

Mr. O'Donnell has water rights that may be impacted by any changes made to this water right. The purpose of this NOIA is to monitor and participate in the resolution of the DNRC Issue Remarks and Objections.

29. O'Donnell withdrew his notice of intent to appear based on the understanding that, according to the Court, none of the issue remarks overcome the prima facie status of the claim. (Doc. 7.00).

#### 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. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

9. After the issuance of a temporary preliminary decree and close of the objection period in a basin, a claimant may amend their Statement of Claim. Section 85-2-233(6), MCA.

10. If an element of a claim did not appear on the objection list for a basin, and a motion to amend that element is filed with the Court, notice by publication of the amendment is required if there is the possibility of adverse affect to other water users. §85-2-233(6), MCA.

11. Rule 15 M.R.Civ.P. restricts the scope of an amendment to the conduct, transaction, or occurrence set forth in the original pleading - the “same set of operative facts as contained in the original pleading.” *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423, 708 P.2d 1014, 1017 (1985). The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).

12. The party seeking to amend a water right claim has the burden to show, by a preponderance of the evidence, that the claim elements they challenge do not accurately reflect the beneficial use of the water rights as they existed prior to July 1, 1973. *Nelson v. Brooks*, 2014 MT 120, ¶34, 375 Mont. 86, 329 P.3d 558; Rule 19, W.R.Adj.R.

#### CONCLUSIONS OF LAW

##### **41I 46192-00**

1. The BLM’s objection overcomes the prima facie status of the claim. The evidence provided in the stipulation shows the historical place of use of claim 41I 46192-00 is limited to Mineral Entry No. 34/Mineral Survey No. 37 (Butterfield Placer) and Mineral Survey No. 8816 (Lower Eldorado Bar Placer).

2. The modification requested in the motion to amend arises out of the same conduct, transaction, or occurrence specified on the original statement of claim and is based on the same operative facts specified in the statements of claim. The motion and evidence in support of the motion are sufficient to support the historical accuracy of the amended point of diversion, thereby overcoming the prima facie proof afforded the point of diversion identified by the statements of claim.

3. The point of diversion did not appear on the Basin 41I Preliminary Decree Objection List. However, Hidden Hollow owns the land described by both legal land descriptions, and the two locations are immediately adjacent to each other. There is no potential adverse affect to other water users and therefore no additional public notice is required.

4. The flow rate issue remarks on claim 41I 46192-00 were resolved during adjudication of the Basin 41I TPD when the Court accepted the parties' stipulation reducing the claimed flow rate.

5. The priority date remark on claim 41I 46192-00 states *if no objections are filed*, the priority date will remain as it appeared on the abstract, and the remark will be removed. The clear import and purpose of this remark is to provide notice of a potential issue and to inform everyone that the priority date will stay in place unless someone objects to it. This remark does not raise any issues about the priority date which need to be addressed and resolved. There is nothing for the Court to do except remove the remark from the abstract.

This remark does not raise any issues. It is not an issue remark. It is a notice remark.

**41I 49382-00**

6. The BLM's objection overcomes the prima facie status of the claim. The evidence provided in the stipulation shows the historical place of use is:

*Place of Use:							
ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1	27.50		W2SE	S2	3	9N	2E BROADWATER
2	1.50	9	NE	SESW	3	9N	2E BROADWATER
<b>Total:</b>	29.00						

7. The flow rate issue remarks do not overcome the prima facie status of claim 41I 49382-00. The claimed flow rate was decreed by the Broadwater County District Court and there is no evidence supporting the issue remarks.

8. The acres irrigated and abandonment issue remarks were resolved during adjudication of the Basin 41I TPD when the Court accepted the parties' stipulation reducing and affirming the maximum acres and place of use.



RECOMMENDATIONS

1. The following place of use information remark should be added to the abstract of claim 41I 46192-00:

Place of Use Information Remark: THE PLACE OF USE IS LIMITED TO MINERAL ENTRY NO. 34/  
MINERAL SURVEY NO. 37 (BUTTERFIELD PLACER) AND MINERAL SURVEY NO. 8816 (LOWER  
ELDORADO BAR PLACER)

2. The point of diversion for claim 41I 46192-00 should be amended to:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	SENESEW	NWNWSW	2	9N	2E	BROADWATER

3. The place of use for claim 41I 49382-00 should be modified as follows:

*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 County</u>
1	27.50		W2SESE2	3	9N	2E BROADWATER
2	1.50	9	NESESEW	3	9N	2E BROADWATER
<b>Total:</b>	29.00					

4. 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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**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:** 411 46192-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HIDDEN HOLLOW HIDEAWAY RANCH INC  
PO BOX 233  
TOWNSEND, MT 59644-0233

**Priority Date:** JUNE 25, 1906

**Type of Historical Right:** FILED

**Purpose (Use):** MINING  
PLACER MINING

**\*Flow Rate:** 2.50 CFS

**\*Volume:** THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

THE STIPULATION FILED ON AUGUST 19, 1998 SPECIFIES THE ADDITION OF THE FOLLOWING REMARK CONCERNING THE PARTIES' AGREEMENT: "THE USE OF THIS WATER IS NON- CONSUMPTIVE AS DEFINED IN SECTION 85-2-342(3), MCA, 1997. THE USE OF THIS WATER FOR RECLAMATION PURPOSES SHALL BE CONSIDERED NON-CONSUMPTIVE FOR THE PURPOSES OF SECTION 85-2-342(3), MCA, 1997." A COPY OF THE STIPULATION IS IN THE CLAIM FILE.

**Source Name:** WOODS 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		SENE SW	2	9N	2E	BROADWATER

**Period of Diversion:** MAY 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO NOVEMBER 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			SWNWNW	2	9N	2E	BROADWATER
2			NE	3	9N	2E	BROADWATER
3			NW	3	9N	2E	BROADWATER
4			N2N2S2	3	9N	2E	BROADWATER
5			SW	35	10N	2E	BROADWATER

THE PLACE OF USE IS LIMITED TO MINERAL ENTRY NO. 34/MINERAL SURVEY NO. 37 (BUTTERFIELD PLACER) AND MINERAL SURVEY NO. 8816 (LOWER ELDORADO BAR PLACER).

**Remarks:**

WHENEVER THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE COMBINED TO SUPPLY WATER FOR THE CLAIMED PURPOSE, EACH IS LIMITED TO THE HISTORICAL 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. 41I 46192-00, 41I 46193-00.

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

**Water Right Number:** 411 49382-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HIDDEN HOLLOW HIDEAWAY RANCH INC  
PO BOX 233  
TOWNSEND, MT 59644-0233

**Priority Date:** JULY 5, 1917

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 2.00 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:** 29.00

**Source Name:** WOODS 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		NWNWSW	2	9N	2E	BROADWATER

**Period of Diversion:** MAY 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** C. MATTHEWS DITCH

**Period of Use:** MAY 1 TO OCTOBER 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	27.50		W2SE	3	9N	2E	BROADWATER
2	1.50	9	NESESW	3	9N	2E	BROADWATER
<b>Total:</b>	<b>29.00</b>						