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FILED
03/11/2025
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-0112-R-2024
Lockman, Melissa
8.00

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

* * * * *

CLAIMANTS: Montana Tunnels Mining Inc.; N & R
Corporation; NR & EJ Corporation

OBJECTORS: United States Department of Interior, Bureau of
Land Management

CASE 41I-0112-R-2024
41I 38509-00
41I 142971-00

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. Claim 41I 38509-00 is

owned by Montana Tunnels Mining Inc., N & R Corporation, and NR & EJ Corporation. Claim 41I 142971 is owned by NR & EJ Corporation. The United States Department of Interior, Bureau of Land Management (United States) objected to both claims. Claim 41I 38509-00 also received issue remarks.

FINDINGS OF FACT

41I 38509-00

1. Claim 41I 38509-00 was decreed as a flood irrigation claim for 2.50 CFS from Spring Creek. The claim was decreed with the following place of use:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	55.00		NE	20	7N	4W	JEFFERSON
2	20.00		S2SE	20	7N	4W	JEFFERSON
3	12.00		NWSE	20	7N	4W	JEFFERSON
4	20.00		E2E2SW	20	7N	4W	JEFFERSON
5	5.00		W2NW	21	7N	4W	JEFFERSON
Total:	112.00						

2. The United States objected to claim 41I 38509-00 based on place of use/maximum acres, stating:

Place of use ID No. 1 includes federal land administered by the Bureau of Land Management (BLM). No authorization exists to irrigate federal land. BLM's objection would be resolved by removal of the federal land in the SWNE Section 20, Township 7N, Range 4W, Jefferson Co and appropriate readjustment of acreage.

3. Claim 41I 38509-00 also received the following substantive 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.

4. On November 21, 2024, Claimants N & R Corporation and NR & EJ Corporation and Objector the United States of America Bureau of Land Management filed their *Stipulation to Resolve Objections*. (Doc.¹ 6.00).

5. Claimant Montana Tunnels Mining, Inc. is a co-owner of claim 41I 38509-00, but they did not appear at the initial status conference and have not participated in resolution of the United States' objections.

6. The *Stipulation* proposes the following modifications to claim 41I 38509-00:

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

Maximum Acres: ~~442.00~~ **70.00**
Source Name: SPRING CREEK
Source Type: SURFACE WATER

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	55.00	17.00	E2NE	NE	20	7N	4W JEFFERSON
2	1.00		SENWNE	20	7N	4W	Jefferson
3	2	20.00	S2SENW	20	7N	4W	JEFFERSON
4	3	12.00	NWSE	20	7N	4W	JEFFERSON
5	4	20.00	E2E2SW	20	7N	4W	JEFFERSON
	5	5.00	W2NW	24	7N	4W	JEFFERSON
Total:	442.00	70.00					

7. The Court set a deadline for Montana Tunnels Mining, Inc. to show cause why the modifications proposed in the *Stipulation* should not be adopted by the Court. (Doc. 7.00). The order stated that “[i]f nothing is filed by the deadline, claim 41I 38509-00 will be modified as proposed in the *Stipulation*.” *Id.* Nothing was filed by the deadline.

8. Claim 41I 38509-00 also received the following ownership issue remark:

AS OF 12/10/2021, THIS WATER RIGHT APPEARS TO BE OWNED BY MONTANA TUNNELS MINING INC., PO BOX 176, JEFFERSON CITY, MT, 59638-0176.

9. The places of use in the NE and NW of Section 20 are owned by Montana Tunnels Mining Inc. The places of use in the SE and SW of Section 20 are owned by NR & EJ Limited Partnership. There are no notes in the claim file explaining why the ownership issue remark was added to the claim abstract.

10. Finally, claim 41I 38509-00 received the following notice-type issue remarks:

POINT OF DIVERSION WAS 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.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON SPRING 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.

10. The United States did not object to the point of diversion or priority date for claim 41I 38509-00. These remarks served their notice purpose.

41I 142971-00

11. Claim 41I 142971-00 was decreed as a stock claim for a spring. The claim was decreed with the following point of diversion and place of use:

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		SENWSW	10	8N	4W	JEFFERSON

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			SW	10	8N	4W	JEFFERSON

12. The United States objected to claim 41I 142971-00 based on place of use/maximum acres, stating:

Place of use is overly broad and includes federal land managed by the Bureau of Land Management (BLM). Refinement of the place of use from the SW to the SENWSW Section 10, Township 8N, Range 4W, Jefferson County will resolve BLM's objection.

13. The *Stipulation* proposes modifying the point of diversion and place of use for claim 41I 142971-00 to the W2SW of Section 10, T8N, R4W, Jefferson County. This modification is consistent with the map attached to the statement of claim:



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.

9. 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.

10. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

11. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

41I 38509-00

1. The objection and issue remarks overcome the prima facie status of claim 41I 38509-00. Based on the evidence before the Court, the modifications proposed in the *Stipulation* reflect the historical use of claim 41I 38509-00. The modifications are reductions to the claimed elements. Rule 17(a), W.R.Adj.R. Based on the evidence, Rule

17(a), W.R.Adj.R., Rule 22, W.R.Adj.R., and Rule 11, W.R.Adj.R., claim 41I 38509-00 should be modified as proposed in the *Stipulation*.

2. The ownership issue remark does not overcome the prima facie status of claim 41I 38509-00. There is no evidence supporting the issue remark.

3. The notice-type issue remarks on claim 41I 38509-00 served their notice purpose.

41I 142971-00

4. The objection overcomes the prima facie status of claim 41I 142971-00. Based on the evidence in the claim file, the modifications proposed in the *Stipulation* reflect the historical use of claim 41I 142971-00.

RECOMMENDATIONS

1. Claim 41I 38509-00 should be modified as follows:

Maximum Acres: ~~442.00~~ **70.00**
Source Name: SPRING CREEK
Source Type: SURFACE WATER

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	55.00	17.00	E2NE	NE	20	7N	4W JEFFERSON
2	1.00		SE	WNE	20	7N	4W Jefferson
3	2	20.00	S2SE	NW	20	7N	4W JEFFERSON
4	3	12.00	NW	SE	20	7N	4W JEFFERSON
5	4	20.00	E2E	SW	20	7N	4W JEFFERSON
5	5.00		W2NW		24	7N	4W JEFFERSON
Total:	442.00	70.00					

2. The issue remarks should be removed from the abstract for claim 41I 38509-00.

3. The point of diversion and place of use for claim 41I 142971-00 to the W2SW of Section 10, T8N, R4W, Jefferson County.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA ELECTRONIC MAIL

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SERVICE VIA USPS MAIL

Montana Tunnels Mining Inc
PO Box 176
Jefferson City, MT 59638-0176

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

Water Right Number: 41I 38509-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA TUNNELS MINING INC
PO BOX 176
JEFFERSON CITY, MT 59638-0176

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: NOVEMBER 22, 1873

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 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: 70.00

Source Name: SPRING 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		NWSESW	20	7N	4W	JEFFERSON

Period of Diversion: MAY 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

Period of Use: MAY 15 TO SEPTEMBER 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	17.00		E2NE	20	7N	4W	JEFFERSON
2	1.00		SEWNNE	20	7N	4W	JEFFERSON
3	20.00		S2SEWN	20	7N	4W	JEFFERSON
4	12.00		NWSE	20	7N	4W	JEFFERSON

5	20.00	E2E2SW	20	7N	4W	JEFFERSON
Total:	<u>70.00</u>					

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

Water Right Number: 41I 142971-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: MAY 20, 1909

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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: SPRING, UNNAMED TRIBUTARY OF LUMP GULCH

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		W2SW	10	8N	4W	JEFFERSON

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 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			W2SW	10	8N	4W	JEFFERSON