

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

* * * * *

CLAIMANT: Ardis M. Kokoruda Revocable Living Trust

OBJECTOR: United States of America (Bureau of Reclamation)

CASE 41I-1009-R-2024
41I 133545-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 claim appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. Claim 41I 133545-00

received an objection from the United States Bureau of Reclamation. The claim 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.

The claim was consolidated into Case 41I-1009-R-2024 and an Order Setting Status Conference was issued by the Court in order to discuss the resolution of the objection and issue remarks with the parties.

FINDINGS OF FACT

1. Claim 41I 133545-00 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 5.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 479-93, DATED 08/29/1979 , APPEARS TO INDICATE 5.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

2. A Status Conference for Case 41I-1009-R-2024 took place on October 15, 2024, by telephone conference call. Water Master Eugene C. White presided; Michelle Ramus was present on behalf of objector United States Bureau of Reclamation (“BOR”); no representative was present on behalf of claimant Ardis M. Kokoruda Revocable Living Trust.

During the conference, the Court intended to discuss the BOR objection to claim 41I 133545-00. However, without participation from the Claimant, a discussion was unable to take place. Ms. Ramus requested a deadline for the BOR to serve the Claimant with proposed modification that would resolve the BOR’s objection, and that a filing deadline be set for the Claimant to file a response to the proposed modifications.

3. On October 16, 2024, the Court set a filing deadline for the BOR to serve the Claimant, and file with the Court, its proposed modifications to claim 41I 133545-00. BOR files a *Response* on October 28, 2024, containing the following proposed modifications:

Flow Rate: ~~3.26 CFS~~ 85.00 GPM

***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: ~~86.00~~ 5.00

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	6.00 5.00		NESWNW	27	9N	2W	JEFFERSON
2	80.00		NE	28	9N	2W	JEFFERSON
Total:	86.00 5.00						

The Court's October 16, 2024 Order also set a filing deadline for the Claimant to respond if they did not agree with the proposed modifications to claim 41I 133545-00. Nothing was filed by the ordered deadline. The Order Setting Filing Deadline included the following language:

ORDERED that claimant Ardis M. Kokoruda Revocable Living Trust file a response stating their position regarding the proposed modifications by **Wednesday, December 18, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimant agrees with the proposed modifications to claim 41I 133545-00.*

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. 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.
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).

CONCLUSION OF LAW

1. The information in the record resolves objection and issue remarks appearing on claim 41I 133545-00. Based on the lack of response by the Claimant, the information provided in the BOR's objection, and the issue remarks appearing on the claim, a preponderance of the evidence shows that claim 41I 133545-00 should be modified as described in Finding of Fact No. 3. These modifications resolve the objection and the issue remarks appearing on claim 41I 133545-00, and the issue remarks should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify claim 41I 133545-00 as described above and remove the issue remarks from the claim.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Ardis M. Kokoruda Revocable Living Trust
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 41I 133545-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KOKORUDA, ARDIS M REVOCABLE LIVING TRUST
SHERRY LEIGH CLADOUHOS TRUSTEE
2009 UNIVERSITY ST
HELENA, MT 59601-5937

Priority Date: MAY 1, 1950

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 85.00 GPM

***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: 5.00

Source Name: MITCHELL 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		SWSENW	27	9N	2W	JEFFERSON

Period of Diversion: MAY 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

Ditch Name: KOKORUDA DITCH

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	5.00		NESWNW	27	9N	2W	JEFFERSON

Total: 5.00

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Total: 5.00