

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

* * * * *

CLAIMANT: Graphite Sales Inc.

OBJECTOR: United States of America (Bureau of Reclamation)

CASE 41I-1037-R-2024

41I 143693-00

41I 143694-00

41I 143695-00

41I 143696-00

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. The above-captioned

claims received an objection from the United States Bureau of Reclamation. 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.

The claims were consolidated into Case 41I-1037-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. A Status Conference for Case 41I-1037-R-2024 took place on November 19, 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 Graphite Sales Inc.

During the conference, the Court intended to discuss the BOR objection to the claims. 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 a copy of the BOR’s objection, and that a filing deadline be set for the Claimant to file a response to the objection if they disagreed with the proposed resolution.

2. On November 21, 2024, the Court set a filing deadline for the BOR to serve the Claimant, and file with the Court, its objection and supporting information. BOR filed a *Response* on December 18, 2024. The *Response* and supporting Declaration of Kraig Van Voast state that each of the claims were objected to on the basis of all elements including abandonment and non-perfection. Further, BOR states that its objection is based on the fact that each of the claims is for irrigation and that the entirety of the places of use for each claim is on federal land with no special use permit authorizing irrigation of that land. Therefore, BOR asserts that the claims should be terminated.

The Court’s November 21, 2024 Order also set a filing deadline for the Claimant to respond if they did not agree with the BOR’s assertion that the claims should be terminated based on abandonment and non-perfection. Nothing was filed by the ordered deadline. The Order Setting Filing Deadline included the following language:

ORDERED that claimant Graphite Sales Inc. file a response stating their position regarding the proposed modifications by **Wednesday, January 22, 2025**. *If nothing is filed by the deadline, this Master will conclude that the Claimant agrees with the proposed modifications to the above-captioned claims.*

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 claims 41I 143693-00, 41I 143694-00, 41I 143695-00, and 41I 143696-00. Based on the lack of response by the Claimant, the information provided in the BOR’s objection, and the issue remarks appearing on the claims, a preponderance of the evidence shows that the claims should be terminated. Termination of the claims resolves the objections from the BOR.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court terminate claims 41I 143693-00, 41I 143694-00, 41I 143695-00, and 41I 143696-00.

Post decree abstracts of the water right claims reflecting the claims as dismissed are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Graphite Sales Inc
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Nova, OH 44859

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: 41I 143693-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: GRAPHITE SALES INC
220 TOWNSHIP RD 791
NOVA, OH 44859

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF WHIPCRACKER GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41I 143694-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: GRAPHITE SALES INC
220 TOWNSHIP RD 791
NOVA, OH 44859

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF WHIPCRACKER GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41I 143695-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: GRAPHITE SALES INC
220 TOWNSHIP RD 791
NOVA, OH 44859

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: WHITE HORSE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41I 143696-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: GRAPHITE SALES INC
220 TOWNSHIP RD 791
NOVA, OH 44859

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF MISSOURI RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.