

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

* * * * *

CLAIMANTS: TJL Properties, LP; Lynn Brainard; Ronald Brainard;
Preston R. Hauber; Jason Lacross; Jennifer Lacross;
Sally Jo Ryan

OBJECTOR: TJL Properties, LP

CASE 41I-1023-R-2024

41I 143546-00

41I 143547-00

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 143546-00 received a self-objection from TJL Properties, LP. 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 above-captioned claims were consolidated into Case 41I-1023-R-2024 to resolve the objection and issue remarks.

FINDINGS OF FACT

1. Claim 41I 143546-00 received the following substantive issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 60 MINER'S INCHES DECREED IN CASE NO. 6428, GALLATIN COUNTY. 41I 143546-00, 41I 143547- 00.

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 67.32 GPM PER ACRE.

THE GALLATIN COUNTY WATER RESOURCES SURVEY (1953) APPEARS TO INDICATE 0.00 ACRES IRRIGATED. USDA AERIAL PHOTOGRAPH NO(S). 179-284, DATED 09/09/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

WATER RIGHT NOS. 41I 143546-00 AND 41I 143547-00, FILED BY THE SAME OWNER, CLAIM THE SAME DECREED RIGHT FROM CASE NO. 6428, GALLATIN COUNTY.

Claim 41I 143547-00 received the following substantive issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 60 MINER'S INCHES DECREED IN CASE NO. 6428, GALLATIN COUNTY. 41I 143546-00, 41I 143547- 00.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 67.32 GPM PER ACRE.

WATER RIGHT NOS. 41I 143546-00 AND 41I 143547-00, FILED BY THE SAME OWNER, CLAIM THE SAME DECREED RIGHT FROM CASE NO. 6428, GALLATIN COUNTY.

2. A Status Conference for Case 41I-1023-R-2024 took place on November 12, 2024, by telephone conference call. Senior Water Master Eugene C. White presided;

Breeann Johnson was present on behalf of claimant/objector TJL Properties, LP; Ben Sudduth was present on behalf of claimants Lynn Brainard, Jason Lacross, and Jennifer Lacross; claimants Ronald Brainard, Preston Hauber, and Sally Jo Ryan were not in attendance.

3. On January 18, 2025, claimant/objector TJL Properties filed a *Notice of Filing Information to Resolve Self-Objection and Issue Remarks* (Doc. 4.00)¹ Attached to the *Notice* was a Memo from DMS Natural Resources, LLC, a water right consultant engaged by TJL Properties. The Memo denotes that during the DNRC’s 1989-1992 review of claims for the Temporary Preliminary Decree, an information remark was added stating that claims 41I 143546-00 and 41I 1435467-00 are for an undivided 1/2 interest in a single appropriation of 1.5 cfs. This information resolves the decree exceeded issue by showing that the decree exceeded issue remark was added in error. Further, the *Notice* proposes the following modifications to resolve the objection and issue remarks for claim 41I 143546-00 and states that the modification would also resolve the issue remarks appearing on claim 41I 143547-00:

Maximum Acres: ~~40.00~~ 4.00
Source Name: BREMMER CREEK
Source Type: SURFACE WATER
Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	3	NESWSW	30	4N	5E	GALLATIN

Period of Diversion: APRIL 1 TO NOVEMBER 1
Diversion Means: HEADGATE

Proposed Place of Use

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	1.3	3	NWSW	30	4N	5E	GALLATIN
2	2.7	2	SWNW	30	4N	5E	GALLATIN
Total: 4.0							

4. On March 19, 2025, claimants Lynn Brainard, Jason Lacross, and Jennifer Lacross filed a *Status Report* (Doc. 9.00)². The *Status Report* states that the

¹ “Doc.” Numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

² *Id.*

aforementioned claimants agree with the analysis in the *Notice* filed by TJL Properties that proposed modifications of claim 41I 143546-00 would resolve all issue present in the case.

5. As of the date of this Master's Report, claimants Preston R. Hauber, Sally Jo Ryan, and Ronald Brainard have not participated in the case.

PRINCIPLES OF LAW

1. 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.

2. 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.

3. 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.

4. 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.

CONCLUSION OF LAW

1. Based on the information contained in the *Notice* filed by TJL Properties and subsequent status report filed by claimants Lynn Brainard, Jason Lacross, and Jennifer Lacross, the proposed modifications should be made to claim 41I 143546-00 as described in Finding of Fact No. 3. These modifications resolve TJL Properties' objection and issue remarks appearing on each claim, and the issue remarks should be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify claim 41I 143546-00 as described above and remove the issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Sally Jo Ryan
4311 50th Ave NE
Seattle, WA 98105

Ronald Brainard
% 6760 Sypes Canyon Rd
Bozeman, MT 59715

Preston R. Hauber
165 Hidden Hills Rd
Sheridan, WY 82801

Service Via Electronic Mail:

Breeann M. Johnson
Kirsia A. Shelkey
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Benjamin S. Sudduth
Sudduth Law, PLLC
benjamin@sudduthlaw.com

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

Water Right Number: 41I 143546-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TJL PROPERTIES, LP
C/O THOMAS J. LOUDERBACK
2415 SAN RAMON VALLEY BLVD, STE 4380
SAN RAMON, CA 94583-5381

Priority Date: MAY 15, 1886

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.50 CFS

THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR 1.50 CFS . 41I 143546-00, 41I 143547-00.
UNDIVIDED 1/2 INTEREST IN A SINGLE WATER RIGHT FOR 1.50 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: 4.00

Source Name: BREMMER 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	3	NENWSW	30	4N	5E	GALLATIN

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 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	1.30	3	NWSW	30	4N	5E	GALLATIN
2	2.70	2	SWNE	30	4N	5E	GALLATIN
Total:	4.00						

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

Water Right Number: 41I 143547-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

LYNN BRAINARD
3070 THORPE RD
BELGRADE, MT 59714

RONALD BRAINARD
%6760 SYPES CANYON RD
BOZEMAN, MT 59715-7797

PRESTON R HAUBER
165 HIDDEN HILLS RD
SHERIDAN, WY 82801-8525

JASON LACROSS
6760 SYPES CANYON RD
BOZEMAN, MT 59715

JENNIFER LACROSS
6760 SYPES CANYON RD
BOZEMAN, MT 59715-7797

SALLY JO RYAN
4311 50TH AVE NE
SEATTLE, WA 98105

Priority Date: MAY 15, 1886

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.50 CFS

THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST
IN A SINGLE WATER RIGHT FOR 1.50 CFS . 41I 142546-00, 41I 143547-00.
UNDIVIDED 1/2 INTEREST IN A SINGLE WATER RIGHT FOR 1.50 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: 10.00

Source Name: BREMMER 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		NWNWNE	13	4N	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1
Diversion Means: HEADGATE
Ditch Name: BRAINARD DITCH
Period of Use: APRIL 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	10.00		NENW	13	4N	4E	GALLATIN
Total:	10.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

143547-00 143563-00