

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

* * * * *

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

CASE 41I-1028-R-2024
41I 143568-00
41I 143570-00

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 claims appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claims 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-1028-R-2024 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41I 143568-00 received the following substantive issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

Claim 41I 143570-00 received the following substantive issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

THE CLAIMED VOLUME EXCEEDS THE 4.25 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

2. On October 9, 2024, the Court consolidated the above-captioned claims into case 41I-1028-R-2024 and set a filing deadline for the Claimants to respond with information or evidence addressing and resolving the issue remarks.

3. On October 21, 2024, claimant Lynn Brainard filed a *Response to Sua Sponte Order*. The *Response* stated the following:

1. With respect to Claim 41I 143568-00, upon information and belief, the claimed flow rate is historically accurate; and
2. With respect to Claim 41I 143570-00, upon information and belief, the claimed flow rate and volume is historically accurate.

4. On February 5, 2025, claimants Lynn Brainard, Jason Lacross, and Jennifer Lacross filed a *Notice of Issue Remark Resolution*. The *Notice* reiterates Mr. Brainard's earlier *Response* and states that each of the aforementioned claimants agree that the flow rate values for each claim and the volume for claim 41I 143570-00 are historically accurate and that the issue remarks should be removed from the 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 issue remarks appearing on the above-captioned claims. Based on the information filed in the *Response* and the *Notice* filed by the Claimants, and the lack of sufficient information supporting the issue remarks from the DNRC, the issue remarks do not overcome the prima facie status afforded to the Statement of Claim for claims 41I 143568-00 and 41I 143570-00. The issue remarks should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove the issue remarks from the claims.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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% 6760 Sypes Canyon Rd
Bozeman, MT 59715

Preston R. Hauber
165 Hidden Hills Rd
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 41I 143568-00 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: AUGUST 31, 1947

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 60.00 GPM

***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: GROUNDWATER

Source Type: GROUNDWATER

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		NWNENW	13	4N	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 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			NWNENW	13	4N	4E	GALLATIN

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.

143568-00 143570-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
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BASIN 41I**

Water Right Number: 41I 143570-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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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: AUGUST 31, 1947

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 60.00 GPM

Volume: 5.00 AC-FT

Households: 2

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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Diversion Means: WELL

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Total:	0.50						

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