

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

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

* * * * *

CLAIMANT: Shawn C. Lewis

OBJECTOR: City of Townsend

CASE 41I-0044-R-2023

41I 89681-00

41I 89682-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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. The claims are owned by Shawn C. Lewis, Leonard H. Lambott, Frank W. McArthur Jr., Leisa N. McArthur, and the City of Townsend objected to claim 41I 89681-00.¹ The City of Townsend also objected to claim 41I 89682-00. Claim 41I 89681-00 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.

FINDINGS OF FACT

1. On November 22, 2024, the City of Townsend filed a Status Report and Conditional Withdrawal of Objections with the Court indicating that its concerns regarding claims 41I 89681-00 and 41I 89682-00 are resolved and its objections are withdrawn. (Doc.² 16.00).

2. Claim 41I 89681-00 appeared in the Basin 41I Preliminary Decree as a flood irrigation claim that diverts water from Deep Creek via a headgate in the NESWNW of Section 10, T6N, R2E, Broadwater County.

3. The claim was decreed as irrigating 76.85 acres, described as follows:

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	24.20		SENE	9	6N	2E	BROADWATER
2	12.65		SWNE	9	6N	2E	BROADWATER
3	40.00		NESE	9	6N	2E	BROADWATER
Total:	76.85						

4. The claim received the following issue remarks:

THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. FROM THE INFORMATION AVAILABLE IT APPEARS THE PRE-JULY 1, 1973 PLACE OF USE WAS IN SENE SEC 08 TWP 06N RGE 02E AND SWNW SEC 09 TWP 06N RGE 02E BROADWATER COUNTY.

THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE NESENE SEC 09 TWP 06N RGE 02E BROADWATER COUNTY.

¹ Mr. Lambott and the McArthurs withdrew their objections to claims 41I 89681-00, and the objections were dismissed by the Court on March 20, 2025. (Doc. 17.00).

² "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

5. On November 14, 2024, Claimant Shawn C. Lewis filed a statement with the Court indicating that he disagreed with any and all changes to claims 41I 89681-00 and 41I 89682-00. (Doc. 15.00).

6. Based on Mr. Lewis's statement, the Court ordered Mr. Lewis to work with the DNRC to resolve the issue remarks on claim 41I 89681-00.

7. On May 15, 2025, DNRC Water Resources Specialist Kirsten Walsh filed a memorandum. (Doc. 18.00). The memorandum stated that Mr. Lewis did not contact the DNRC as required.

8. Ms. Walsh recommended claim 41I 89681-00 be modified as described in the issue remarks.

9. The claim file for claim 41I 89681-00 contains an "Authorizaiton to Change Appropriation Water Right" dated November 8, 1977. The document describes how claim 41I 89681-00 would be modified from its pre-1973 use:

The appropriation water right and its use is a portion, being 75 miner's inches, of the claimed decreed right in the name of George Norton and Lee Sterling, for 150 miner's inches from Deep Creek, a tributary of the Missouri River, with a priority date of August 1, 1866, as filed under Case Number 465 in the Fourteenth Judicial District Court of Meagher County, Montana.

Waters pursuant to the above-claimed water right have been diverted from Deep Creek at a point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, Township 6 North, Range 2 East, M.P.M., and used for irrigation of 80 acres, more or less, in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8 and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, both in Township 6 North, Range 2 East, M.P.M., Broadwater County, Montana, from May 1 to November 1, inclusive, of each year.

The Department hereby authorizes the change of the above-referenced water right as follows:

- 1. The Department hereby authorizes the sale of the portion, being 75 miner's inches, of the above referenced water right from Gerald F. Olsen of Townsend, Montana, to Charles Mitchell of Townsend, Montana.*
- 2. The Department hereby authorizes the change in place of use, to irrigate 80 acres, more or less, in the S $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$, all in Section 9, Township 6 North, Range 2 East, M.P.M., Broadwater County, Montana.*

10. Based on Ms. Walsh's recommendations and the information in the claim file, the Court ordered Mr. Lewis to show cause why claim 41I 89681-00 should not be modified to reflect the pre-July 1, 1973 use as follows:³

³ The acreage totals were pulled from the 1956 Water Resources Survey.

Maximum Acres: ~~76.85~~ 80.00
Source Name: DEEP 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	NESENE	NESWNW	40 9	6N	2E	BROADWATER

Period of Diversion: MAY 1 TO NOVEMBER 1
Diversion Means: HEADGATE
Period of Use: MAY 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	40.00 24.20		SENE	8 9	6N	2E	BROADWATER
2	40.00 12.65		SWNE	9	6N	2E	BROADWATER
			SWNW				
3	40.00		NESE	9	6N	2E	BROADWATER
Total:	76.85 80.00						

11. The order stated that if nothing was filed by the deadline, claim 41I 89681-00 would be modified to reflect its pre-July 1, 1973 use. (Doc. 19.00). Nothing was filed by the deadline.

12. Claim 41I 89682-00 received the following notice-type issue remarks:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON DEEP CREEK WITH A PRIORITY DATE POSTDATING CASE NO. 465 , MEAGHER COUNTY.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON DEEP CREEK WITH A PRIORITY DATE POSTDATING CASE NO 465, MEAGHER 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.

13. These remarks served their notice purposes.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Mont. Code Ann. § 85-2-227 (2025); 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. §§ 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. § 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.

CONCLUSIONS OF LAW

1. The City of Townsend's objection is resolved and should be dismissed.

2. The point of diversion and place of use issue remarks overcome the prima facie status of claim 41I 89681-00. The evidence in the claim file shows the decreed elements did not reflect the pre-July 1, 1973 use of claim 41I 89681-00. Based on the evidence in the claim file, the pre-July 1, 1973 use of claim 41I 89681-00 is as described in Finding of Fact No. 10.

3. The notice-type issue remarks in Findings of Fact No. 12 served their notice purpose.

RECOMMENDATIONS

1. The point of diversion and place of use for claim 41I 89681-00 should be modified as follows:

Maximum Acres: ~~76.85~~ 80.00
Source Name: DEEP 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	NE SENE	NE SWNW	40 9	6N	2E	BROADWATER

Period of Diversion: MAY 1 TO NOVEMBER 1
Diversion Means: HEADGATE
Period of Use: MAY 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	40.00 24.20		SENE	8 9	6N	2E	BROADWATER
2	40.00 12.65		SWNE	9	6N	2E	BROADWATER
			SWNW				
3	40.00		NESE	9	6N	2E	BROADWATER
Total:	76.85 80.00						

2. The issue remarks should be removed from the claim abstracts.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Shawn C Lewis
PO Box 327
Townsend, MT 59644

SERVICE VIA ELECTRONIC MAIL

Breeann M Johnson Esq
Kirs A. Shelkey, Esq
Western Roots Law PLLC
johnson@westrootslaw.com
shelkey@westrootslaw.com
(atty City of Townsend)

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

Water Right Number: 41I 89681-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: SHAWN C LEWIS
PO BOX 327
TOWNSEND, MT 59644-0327

Priority Date: AUGUST 1, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.88 CFS

*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: 80.00

Source Name: DEEP CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
1		NE	SENE	9	6N	2E	BROADWATER
Period of Diversion:		MAY 1 TO NOVEMBER 1					
Diversion Means:		HEADGATE					
Period of Use:		MAY 1 TO NOVEMBER 1					

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
1	40.00		SENE	8	6N	2E	BROADWATER	
2	40.00		SWNW	9	6N	2E	BROADWATER	
Total:		80.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

89681-00 89682-00

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

Water Right Number: 41I 89682-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHAWN C LEWIS
PO BOX 327
TOWNSEND, MT 59644-0327

Priority Date: APRIL 10, 1950

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.91 CFS

***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: 76.85

Source Name: DEEP 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		NESWNW	10	6N	2E	BROADWATER

Period of Diversion: MAY 15 TO JULY 15

Diversion Means: HEADGATE

Ditch Name: SECTION 10 DITCH

Period of Use: MAY 15 TO JULY 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	24.20		SENE	9	6N	2E	BROADWATER
2	12.65		SWNE	9	6N	2E	BROADWATER
3	40.00		NESE	9	6N	2E	BROADWATER

Total: 76.85

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

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