

Montana Water Court
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FILED
10/24/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-0167-R-2025
Lockman, Melissa
5.00

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

* * * * *

CLAIMANTS: Charles M. Virag; Joseph M. Virag Trust

CASE 41I-0167-R-2025
41I 117807-00

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

Claim 41I 117807-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Charles M. Virag and the Joseph M. Virag Trust. The claim 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

Priority Date and Type of Right

1. Claim 41I 117807-00 appeared in the Basin 41I Preliminary Decree as a December 1, 1899 decreed right. The claim received the following issue remarks:

CASE NO. 16631, LEWIS AND CLARK COUNTY, DATED MAY 09, 1942, DOES NOT SPECIFY PRIORITY DATES. THE DECREE INDICATES USE BEGAN MORE THAN 50 YEARS PRIOR TO THE DECREE. A PRIORITY DATE HAS BEEN CLAIMED.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INCLUDES A FILED RIGHT WHICH CONFIRMS THE CLAIMED PRIORITY DATE.

2. As noted in the issue remarks, the documents attached to the statement of claim include a filed notice of appropriation which supports the claimed priority date of December 1, 1899.

Purpose and Place of Use

3. Claim 41I 117807-00 appeared in the Basin 41I Preliminary Decree as a claim for sprinkler irrigation from Trout Creek for use on:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Tw</u>	<u>Rge</u>	<u>County</u>
1	5.00		NENENE	9	11N	1W	LEWIS AND CLARK
Total:	5.00						

THE PLACE OF USE IS LOCATED IN THE LITTLE DANDY MILL SITE, MINERAL SURVEY NO. 5195-B.

4. The claim received the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE LEWIS AND CLARK COUNTY WATER RESOURCES SURVEY (1957) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CLAIMED PURPOSE DOES NOT MATCH THE FORMERLY DECREED PURPOSE. CASE NO. 16631, LEWIS AND CLARK COUNTY DECREED THE USE AS POWER GENERATION AND MILLING OF ORES PRODUCED FROM MINING.

5. The Court ordered Claimant to work with the DNRC to resolve the acres irrigated issue remarks. On July 23, 2025, DNRC Water Resources Specialist Jason Larsen filed a memorandum. (Doc.¹ 3.00). Claimant Charles Virag and Mike Virag (trustee of the Joseph M. Virag Trust) worked with Mr. Larsen. Claimants provided information to Mr. Larsen that a pipeline was installed on the property “sometime in the

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

1950s for sprinkler irrigation” and that “the sprinklers are used throughout the property (both parcels) on the south side of York Road, for lawn and garden, including trees and a shelter belt.”

6. Based on information from the Claimants and in the claim file, the DNRC was able to substantiate irrigation on 2.27 acres as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>NWNWNW</u> <u>Qtr Sec</u>	<u>10</u> <u>Sec</u>	<u>11N</u> <u>Twp</u>	<u>1W</u> <u>Rge</u>	<u>LEWIS AND CLARK</u> <u>County</u>
1	5.00	1.87	NENENE	9	11N	1W	LEWIS AND CLARK
Total:	5.00	2.27					

7. The supporting documents attached to the statement of claim show both tracts identified by the DNRC are within the originally claimed place of use.

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.

8. 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.

9. Prior to July 1, 1973 when the Montana Water Use Act became law, a water user could change the point of diversion, place of use, or even purpose of a water right by simply implementing the change. The only restriction was that the change could not cause injury to other water users. § 89-803 RCM (1947) (repealed 1973). The burden was on the party claiming an injury to prove that the change to the water right at issue adversely impacted their ability to exercise their water rights. *Hansen v. Larsen*, 44 Mont. 350, 353, 120 Pd. 229, 231 (1911).

CONCLUSIONS OF LAW

1. The type of historical right issue remark overcomes the prima facie status of claim 41I 117807-00. The evidence in the claim file shows the claim is a filed right. Because this is a filed right, the issue remark related to the decreed priority date is irrelevant and does not overcome the prima facie status of the claim.

2. The acres irrigated issue remark overcomes the prima facie status of claim 41I 117807-00. Based on the evidence in the claim file and provided to DNRC, the historically accurate place of use is as described in Finding of Fact No. 6.

3. The purpose issue remark does not overcome the prima facie status of claim 41I 117807-00. Based on the evidence provided by Claimant, the purpose was changed prior to July 1, 1973. No party has claimed an injury proving that the change to the water right adversely impacted their ability to exercise their water rights.

RECOMMENDATIONS

1. The type of right for claim 41I 117807-00 should be modified to “filed”.
2. The maximum acres and place of use for claim 41I 117807-00 should be modified as follows:

<u>2</u> <u>ID</u>	<u>0.40</u> <u>Acres</u>	<u>Govt Lot</u>	<u>NWNWNW</u> <u>Qtr Sec</u>	<u>10</u> <u>Sec</u>	<u>11N</u> <u>Twp</u>	<u>1W</u> <u>Rge</u>	<u>LEWIS AND CLARK</u> <u>County</u>
1	5.00	1.87	NENENE	9	11N	1W	LEWIS AND CLARK
Total:	5.00	2.27					

3. The issue remarks should be removed from the claim abstract.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Charles M Virag
PO Box 2111
East Helena, MT 59635-2111

Joseph M Virag Trust
5477 W Hinsdale Pl
Littleton, CO 80128-7023

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

Water Right Number: 41I 117807-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHARLES M VIRAG
PO BOX 2111
EAST HELENA, MT 59635-2111

VIRAG, JOSEPH M TRUST
5477 W HINSDALE PL
LITTLETON, CO 80128-7023

Priority Date: DECEMBER 1, 1899

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 60.00 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: 2.27

Source Name: TROUT 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		NENENE	9	11N	1W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: PUMP

2		NENENE	9	11N	1W	LEWIS AND CLARK
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Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: PUMP

THE POINT OF DIVERSION INCLUDES TWO PUMPS.

Period of Use: MAY 1 TO SEPTEMBER 30

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	1.87		NENENE	9	11N	1W	LEWIS AND CLARK
2	0.40		NWNWNW	10	11N	1W	LEWIS AND CLARK

Total: 2.27

THE PLACE OF USE IS LOCATED IN THE LITTLE DANDY MILL SITE, MINERAL SURVEY NO. 5195-B.

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.

117805-00 117807-00