

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

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

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CLAIMANTS: Darlene L. Hoppe; Jacob R. Hoppe; Robert R.  
Hoppe; Douglas Harrington; Kellie Goodwin  
McBride

**CASE 41I-0012-R-2023**  
41I 5489-00  
41I 7072-00

**~~NOTICE OF INTENT TO APPEAR: Bull Ridge Ranch LLC~~**

**ORDER GRANTING MOTION, ORDER DISMISSING NOIA, AND  
ORDER CLOSING CASE**

This order addresses the August 26, 2025 motion to amend and closes proceedings in this case. The claims in this case are subject to an issue remark that states:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41I 7072-00, 41I 5489-00.

Claim 41I 5489-00 also received a notice-type remark concerning a modification to the point of diversion that will be removed from the claim. Additionally, claim 41I 5489-00 received an objection from the City of Townsend. However, the objection was withdrawn. (Doc. 17.00). Bull Ridge Ranch LLC (“Bull Ridge”) has a Notice of Intent to Appear (“NOIA”) on claim 41I 5489-00.

## BACKGROUND

Claims 41I 5489-00 and 41I 7072-00 are based on a filed appropriation for 200 MI (the equivalent of 5.00 CFS) from the North Fork of Deep Creek by Martin Peterson and Walter Crane for use beginning on May 1, 1902 (“the NOA”). The NOA was attached to each of the Statement of Claim filings. *See* claim files for 41I 5489-00 and 41I 7072-00. Although the NOA was for a total of 5.00 CFS, the Preliminary Decree reflects claim 41I 7072-00, owned by Ashley Gebhardt, Cole R. Gebhardt, and Kellie Goodwin McBride (“McBride”) has a 1.70 CFS flow rate and claim 41I 5489-00, owned by Darlene L. Hoppe, Robert Hoppe, and Jacob R. Hoppe (“Hoppes”), has a 5.00 CFS flow rate. Since the combined flow rate of both claims exceeds the flow rate set forth in the NOA and claim 41I 5489-00 is for the entire flow, the claims were subject to an “overfiled NOA” issue remark.

On September 23, 2023, Hoppes filed a motion requesting to reduce the flow rate of claim 41I 5489-00 from 5.00 CFS to 3.30 CFS. McBride filed a brief in support of Hoppe’s amendment agreeing the reduction resolves the issue remark on both claims. (Doc. 31.00).

Bull Ridge Ranch LLC responded opposing Hoppes’ motion. (Doc. 30.00). In its response, Bull Ridge asserts the underlying NOA that forms the basis of both claims 41I 5489-00 and 41I 7072-00 is faulty and that Hoppes “failed to produce any evidence that would indicate that the Peterson NOA complied with law or that demonstrates that the priority date of the Peterson NOA is valid.” *Id.* at 3. Bull Ridge contends the issue remark and, therefore, its NOIA are not resolved. *Id.* at 1.

Hoppes argues that as a NOIA party, Bull Ridge may not attempt to attack the validity of the NOA because the issue remark did not place the validity of the NOA at issue. (Doc. 32.00 at 2-4). McBride joined the reply agreeing that the validity of the NOA is not at issue. McBride further argued that because Bull Ridge only filed a NOIA against claim 41I 5489-00, Bull Ridge was precluded from challenging the validity of the underlying NOA as such a challenge would extend the scope of Bull Ridge’s NOIA to

include the validity of claim 41I 7072-00. Bull Ridge neither objected to nor filed a NOIA against 41I 7072-00. (Doc. 33.00).

## **APPLICABLE LAW**

### *Resolution of Issue Remarks*

Claims included in the Preliminary Decree for Basin 41I were subject to issue remarks used to denote potential issues affecting the claims. Rule 9(a) of the Water Right Adjudication Rules prescribes that the Water Court compile an objection list to identify all claims subject to objections, counterobjections and issue remarks. Pursuant to Rule 7, W.R.Adj.R., the Water Court is required to resolve all issue remarks using procedures in Sections 85-2-247 to -250, Mont. Code Ann. The Water Court may resolve issue remarks based on information submitted by the Department of Natural Resources and Conservation or any other data and information it obtains. *See* §§ 85-2-248 to -250, MCA.

### *Notices of Intent to Appear*

All water users in a basin receive notice when a preliminary decree is issued and their opportunity to file objections. §§ 85-2-231 to -233, MCA; Rule 5(a), W.R.Adj.R. After objections are filed, a deadline is set for water users whose claim received an objection to file a counterobjection “to any claim of the objector in the decree.” Rule 6(a), W.R.Adj.R. After the objection list is noticed, a deadline is set for filing NOIA. The scope of a NOIA is governed by Rule 9(b), W.R.Adj.R. A NOIA may be filed to participate in further proceedings on a claim. *Id.* NOIA parties receive notice of all future proceedings involving the claims and are entitled to participate in the resolution of the issues associated with those claims. *Id.* “Under these rules, such a party is limited to participating in resolution of issues raised by objections, counter-objections, issue remarks, or issues raised on motion of the Water Court.” *In re Erb*, 2016 Mont. Water LEXIS 2, \*12. By electing not to object, a NOIA party jeopardizes its ability to raise new issues later. *Id.* at \*17.

### *Reductions to Claim Elements*

According to Rule 17(c), W.R.Adj.R., an element of a claim may be reduced or limited by a claimant without a determination of whether the burden of proof has been met. “The water court may accept a claimant’s requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA, must be applied.” *Id.*

### **ANALYSIS**

To resolve the overfiled NOA issue remark, Hoppes requested to reduce the flow rate of claim 41I 5489-00 from 5.00 CFS to 3.30 CFS. (Doc. 29.00). The reduction in flow rate brings the total flow rate of claims 41I 5489-00 and 41I 7072-00 to 5.00 CFS, the amount originally specified in the NOA. Bull Ridge argues the overfiled NOA issue remark and its NOIA are not resolved by the reduction in the flow rate since the reduction does not address the underlying NOA. (Doc. 30.00).

Bull Ridge asserts that the flow rate reduction does not resolve the overfiled NOA issue remark because the remark “explicitly calls the type of historical right and priority date elements into question.” *Id.* at 4. Based on its assertion that the issue remark places the type of historical right and priority date in question, Bull Ridge posits that to resolve the issue remark, Hoppes is required to provide evidence “to address the defects of the notice of appropriation at issue...” *Id.* at 1.

Both Hoppes and McBride agree the overfiled NOA is resolved by Hoppes’ reduction and that Bull Ridge’s assertions against the validity of the NOA exceeds the scope of the NOIA for several reasons. (Docs. 32.00 & 33.00). First, the issue remark does not place the validity of the NOA at issue. Second, the scope of the NOIA is exceeded because if the reduction resolves the issue remark, then there are no other issues before the Court for participation by a NOIA party. *Id.* Moreover, the NOIA was only filed on claim 41I 5489-00, not claim 41I 7072-00. (Doc. 33.00).

#### *1. Does the issue remark place the validity of the underlying NOA at issue?*

Bull Ridge interprets the issue remark as providing a NOIA party with the opportunity to potentially participate on all elements of the claim. (Doc. 30.00).

According to Bull Ridge, the language of the issue remark and the Preliminary Decree objection list placed the validity of the underlying NOA at issue. *Id.* Bull Ridge states the first sentence of the issue remark explicitly places the type of historical right, priority date, and flow rate at issue. *Id.* at 3-4.

The first sentence of the issue remark states, “the type of historical right, priority date, and flow rate may be questionable.” The first sentence must be read in context with the rest of the remark, not interpreted independently. As explained in the remaining text of the issue remark, the total flow rate of the two water rights exceeds the flow rate identified in the NOA. As noted in the first sentence, type of historical right, priority date, and flow rate may be questionable as a result of the reach of potential resolutions of overfiled NOAs. For example, in some instances, one or more claims listed in an overfiled NOA issue remark may be based on different or separate appropriations. In such situations, the type of historical right, priority date, and/or flow rate elements may need to be corrected.

The preceding example is also instructive on why the objection list generated by the Water Court pursuant to Rule 9(a), W.R.Adj.R., may notice “All Elements.” In general, the objection list casts a wide net to provide an overview of the actual issues and objections to which a claim is subject.

In context, the overfiled NOA issue remark does not place the validity of the underlying NOA for both claims in this case at issue.

## 2. *What is the scope of Bull Ridge’s NOIA?*

Hoppes and McBride contend that the validity of the underlying NOA is also outside the scope of the NOIA. (Docs. 32.00 & 33.00). The scope of a NOIA is governed by Rule 9(b), W.R. Adj.R: a NOIA may be filed to participate in further proceedings on a claim. NOIA parties are not allowed to raise new issues but are limited to participating in issues already raised. *In re Erb*, 2016 Mont. Water LEXIS 2, \*12.

NOIA parties cannot raise or expand the issues on their own accord. The limitation in scope of what NOIA parties are permitted to raise is in the interest of the timely and fair adjudication of water rights claims. *Id.* at \*10. Because the notice

periods in water rights adjudications are extensive, it is imperative that fixed deadlines are adhered to and not needlessly extended by parties attempting to expand the breadth of their participation when alternative avenues—like objection—are available, as is the case here. *Id.* at \*11. The objection in this case was withdrawn, and the only other issue for resolution is the overfiled NOA issue remark. Bull Ridge is only permitted to raise issues within the scope of the issue remark. By electing to file a NOIA rather than an objection, Bull Ridge, or its predecessor, eliminated its opportunity to raise new issues.

Therefore, the validity of the underlying NOA is beyond the scope of Bull Ridge's NOIA. If Bull Ridge intended to attack the validity of the NOA, then it should have filed an objection to both claims 41I 5489-00 and 41I 7072-00.

*3. Is the issue remark resolved?*

Bull Ridge argues that the issue remark is not resolved because Hoppes has not provided evidence to address the validity of the NOA. (Doc. 30.00 at 3). As determined above, in this case the issue remark did not raise the validity of the NOA, and Bull Ridge's assertions against resolution of the issue remark improperly expand the scope of the NOIA beyond the issues raised in the case.

The reduction in the flow rate of claim 41I 5489-00 to 3.30 CFS brings the total flow rate of claims 41I 5489-00 and 41I 7072-00 to 5.00 CFS, as originally appropriated in the NOA. Therefore, the reduction resolves the issue remark. As set forth in Rule 17, W.R.Adj.R., the Court does not require further presentation of evidence on a reduction unless there is an unresolved issue remark. Here, no further evidence is required. The reduction resolves the overfiled NOA and there are no other outstanding issue remarks. As such, there are no further issues for Bull Ridge's participation.

CONCLUSION

The reduction in flow rate of claim 41I 5489-00 resolves the overfiled NOA issue remark on both claims in this case, pursuant to Rule 17, W.R.Adj.R. As the objection was withdrawn and the issue remarks are resolved, no issues remain for involvement by a NOIA party.

Therefore, it is

ORDERED that the request to reduce the flow rate of claim 41I 5489-00 is GRANTED.

ORDERED that the issue remarks are resolved and are removed from the abstracts of claims 41I 5489-00 and 41I 7072-00. Abstracts of the claims are provided with this Order.

ORDERED that the NOIA is dismissed and proceedings in this case are CLOSED.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**SERVICE VIA USPS MAIL**

Douglas Harrington  
1157 Us Highway 12 E  
Townsend, MT 59644

**SERVICE VIA ELECTRONIC MAIL**

Benjamin S Sudduth  
SUDDUTH LAW PLLC  
benjamin@sudduthlaw.com

Peter Taylor  
Hertha L Lund  
Lund Law PLLC  
lund@lund-law.com  
taylor@lund-law.com  
paralegal@lund-law.com

Hallee C Frandsen  
W John Tietz  
Browning Kaleczyc Berry & Hoven PC  
hallee@bkbh.com  
john@bkbh.com  
wcfilings@bkbh.com

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

**Water Right Number:** 411 5489-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DARLENE L HOPPE  
302 LIPPERT GULCH  
TOWNSEND, MT 59644-9629

JACOB R HOPPE  
307 N WALNUT ST  
TOWNSEND, MT 59644-2317

ROBERT R HOPPE  
302 LIPPERT GULCH  
TOWNSEND, MT 59644-9629

**Priority Date:** MAY 1, 1902

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 5.00 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:** 532.00

A TOTAL OF ONLY 146.00 ACRES MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON BY THIS WATER RIGHT AND ITS SUPPLEMENTAL WATER RIGHT, 411 5493-00, WITHIN THE 532.00 ACRES DESCRIBED UNDER THIS WATER RIGHT.

**Source Name:** DEEP CREEK, NORTH FORK

**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		NWNENE	18	7N	4E	BROADWATER

**Period of Diversion:** APRIL 15 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** HARVEY-HOOVER-LIPPERT DITCH

2		SWNESW	18	7N	4E	BROADWATER
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**Period of Diversion:** APRIL 15 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** NICHOLS-HOPPE DITCH

**Period of Use:** APRIL 15 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	119.00		SE	13	7N	3E	BROADWATER
2	390.00			24	7N	3E	BROADWATER
3	23.00		W2SW	18	7N	4E	BROADWATER
<b>Total:</b>	<b>532.00</b>						

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**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.

5489-00                      5493-00

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

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

**Water Right Number:** 411 7072-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ASHLEY GEBHARDT  
7880 FOWLER LN  
BOZEMAN, MT 59718-8314

COLE R GEBHARDT  
7880 FOWLER LN  
BOZEMAN, MT 59718-8314

KELLIE GOODWIN MCBRIDE  
238 N FORK RD  
TOWNSEND, MT 59644-9574

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

**Priority Date:** MAY 1, 1902

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.70 CFS

THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

**\*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:** 45.00

**Source Name:** DEEP CREEK, NORTH FORK

**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		SWNESW	18	7N	4E	BROADWATER

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** NICHOLS-HOPPE DITCH

**Period of Use:** APRIL 15 TO OCTOBER 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	40.00		E2NE	24	7N	3E	BROADWATER

2	<u>5.00</u>	W2NESE	24	7N	3E	BROADWATER
<b>Total:</b>	45.00					

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**Remarks:**

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.