

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

CLAIMANT: Winston Realty LLC

OBJECTORS: United States, DOI Bureau of Reclamation; United States, DOA Forest Service

CASE 41I-0073-R-2023
41I 100357-00

CLOSING ORDER

Claim 41I 100357-00 was included in the Preliminary Decree for Upper Missouri River Above Holter Dam, Basin 41I issued on June 24, 2023. The claim is owned by Winston Realty LLC (“Winston”) and is for irrigation from Badger Creek, also known as Vose Gulch.

The claim received objections from the United States Bureau of Reclamation and the United States Forest Service (collectively “the United States”). The claim also received issue remarks resulting from examination by the Department of Natural Resources and Conservation (“DNRC”). The issue remarks questioned the number of acres irrigated and flow rate. Winston was required to work with DNRC to resolve the issue remarks. (Doc. 14.00).

On July 18, 2025, DNRC submitted a Memorandum with recommendations to resolve the issue remarks. (Doc. 17.00). DNRC recommended reducing the number of irrigated acres from 145.00 acres to 65.00 acres, reducing the flow rate from 5.00 CFS to 2.46 CFS, and removing one of the points of diversion. *Id.*

Winston disagreed with the reductions to flow rate and acreage recommended in the DNRC Memorandum. (Doc. 26.00). Winston requested the flow rate and acreage remain as listed in the Preliminary Decree. In support, Winston provided a report by Downstream Research, which explained the full 5.00 CFS flow rate is necessary based on seepage, length of the ditch, and topography. Further, the acreage is supported by the site visit conducted by Downstream Research and the fact that the Water Resources Survey appears not to have included irrigated pasture. *Id.*

The United States responded that it would defer to the Court's resolution of acres and flow rate so long as the following information remark is added to the claim concerning the point of diversion:

THERE IS NO DIVERSION STRUCTURE ON BADGER CREEK. BADGER CREEK WATER IS CONVEYED VIA THE NATURAL CHANNEL TO SOUTH FORK BEAVER CREEK THEN BEAVER CREEK, TO THE NWSWSE SECTION 11, T8N R1W. THE DIVERTED FLOW RATE, FOR WATER RIGHT 41I 100357-00, FROM BEAVER CREEK, MAY NOT EXCEED THE FLOW RATE OF BADGER CREEK ENTERING THE SOUTH FORK OF BEAVER CREEK, AS WOULD BE MEASURED AT THAT CONFLUENCE IN THE NESWSW SECTION 28, T8N, R1W.

(Doc. 26.00).

Pursuant to Rule 7 of the Water Right Adjudication Rules, the Water Court is required to resolve all issue remarks based on information submitted by DNRC or any other data and information it obtains. Mont. Code Ann. §§ 85-2-247 through 85-2-250. 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 Court determined the information provided by Winston is sufficient to resolve the issue remarks and retain irrigation of 145.00 acres with a 5.00 CFS flow rate. (Doc. 31.00). Winston confirmed the point of diversion ID No. 2 should be removed and agreed the information remark required to resolve the United States' objection should be added to the abstract of 41I 100357-00. The United States also confirmed its objection was resolved. (Doc. 32.00).

Therefore, it is

ORDERED that the point of diversion of claim 41I 100357-00 is corrected as recommended in the July 18, 2025 DNRC Memorandum and the information remark stated above is added to the abstract of claim 41I 100357-00.

ORDERED that the issue remarks are resolved and are removed from the abstract of claim 41I 100357-00 and the objections to the claim are DISMISSED.

ORDERED that proceedings in this case are CLOSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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

Water Right Number: 411 100357-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WINSTON REALTY LLC
522 JETWAY DR
BELGRADE, MT 59714-9152

Priority Date: AUGUST 25, 1904

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: 145.00

Source Name: BADGER CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS VOSE GULCH.

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		SWNWSE	11	8N	1W	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: INDIAN CREEK (MUFFLY) DITCH

THERE IS NO DIVERSION STRUCTURE ON BADGER CREEK. BADGER CREEK WATER IS CONVEYED VIA THE NATURAL CHANNEL TO SOUTH FORK BEAVER CREEK THEN BEAVER CREEK, TO THE NWSWSE SECTION 11, T8N R1W. THE DIVERTED FLOW RATE, FOR WATER RIGHT 411 100357-00, FROM BEAVER CREEK, MAY NOT EXCEED THE FLOW RATE OF BADGER CREEK ENTERING THE SOUTH FORK OF BEAVER CREEK, AS WOULD BE MEASURED AT THAT CONFLUENCE IN THE NESWSW SECTION 28, T8N, R1W.

SOUTH FORK BEAVER CREEK AND BEAVER CREEK ARE USED AS A NATURAL CARRIERS TO CONVEY WATER FROM BADGER CREEK TO THE POINT OF DIVERSION.

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	46.00		SE	12	8N	1W	BROADWATER
2	22.00		SW	12	8N	1W	BROADWATER
3	30.00		NE	13	8N	1W	BROADWATER

4	<u>47.00</u>	NW	13	8N	1W	BROADWATER
Total:	145.00					

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.

100357-00 100358-00