FILED
10/15/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-3116-R-2026
Stern, Anika
1.00

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

* * * * * * * * * * * * * * * * * * * *

CLAIMANTS: Todd Moldenhauer; Wanda Moldenhauer; Russell Beebe; Cheryl Moldenhauer	**CASE 41I-3116-R-2026** 41I 1046-00

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

FINDINGS OF FACT

1. The record owners of irrigation claim 41I 1046-00 are Russell Beebe, Cheryl Moldenhauer, Todd Moldenhauer, and Wanda Moldenhauer (Claimants).

2. Claim 41I 1046-00 was decreed with Montana Department of Natural Resources and Conservation ("DNRC") issue remarks:

- THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OFDIVERSION AND PERIOD OF USE BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.
- DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
- ON 12/16/2021, THE OWNER'S REPRESENTATIVE IDENTIFIED THAT THERE IS ONLY ONE POINT OF DIVERSION LOCATED IN THE SWSENW OF SECTION 21 T9N R1W. IT APPEARS THAT DIVERSION NO.2 WAS ABANDONED AT SOME POINT. (SEE THE CLAIM FILE FOR DETAILS.).

3. The first two issue remarks decreed on claim 41I 1046-00 are notice-type remarks.

4. Based on notes in DNRC's claim 41I 1046-00 claim file, it appears the third issue remark, referencing point of diversion, resulted from a conversation DNRC Water Resource Specialist had with then-potential-owner Russell Beebe.

5. The point of diversion for claim 41I 1046-00 was modified during adjudication of the claim in the Temporary Preliminary Decree in Case 41I-63. An Amended Master's Report was issued on April 18, 2000 and it was adopted on May 19, 2000. The Amended Master's Report in Case 41I-63 indicated the points of diversion for claim 41I 1046-00 should be:

POINTS OF DIVERSION:

	QTR SEC	SEC	TWP	RGE	COUNTY
01	NESENW	21	09N	01W	BROADWATER
02	SESWSW	21	09N	01W	BROADWATER

DITCH NAME FOR BOTH DIVERSIONS IS: R. MYLES DITCH

The point of diversion modifications were made after Water Master Carol Brown reviewed the November 9, 1998 Affidavit of Alfred L. and Molly L. Myles, supported by maps, along with the March 25, 1999 Memorandum from DNRC employee Kathy Arndt. Claim 41I 1064-00 was decreed in the 41I Preliminary Decree with points of diversion matching the Recommendations in Case 41I-63.

Claim 41I 1046-00 has been through ample procedure at the Water Court, having received two Master's Reports in the Temporary Preliminary Decree. Without an

objection or a motion, this Water Master will not upset the decision made by Water Master Brown in Case 41I-63 and will recommend the point of diversion issue remark be removed.

PRINCIPLES OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Mont. Code Ann. § 85-2-248 (2025).

2. 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). This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

CONCLUSION OF LAW

The notice type issue remarks decreed on claims in this Case have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATION

The issue remarks should be removed from claim 41I 1046-00.

An abstract is attached for review.

Service via USPS Mail

Todd Moldenhauer
Wanda Moldenhauer
27 Pole Creek Rd
Winston, MT 59647

Russell Beebe
Cheryl Moldenhauer
200 L F Baum Rd
East Helena, MT 59635

Electronically Signed By:
Hon. Judge Anika Stern
Thu, Oct 15 2026 12:02:39 PM

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

MISSOURI RIVER, ABOVE HOLTER DAM

BASIN 41I

Water Right Number: **41I 1046-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

RUSSELL BEEBE
200 L F BAUM RD
EAST HELENA, MT 59635-9771

CHERYL MOLDENHAUER
200 L F BAUM RD
EAST HELENA, MT 59635-9771

TODD MOLDENHAUER
27 POLE CREEK RD
WINSTON, MT 59647

WANDA MOLDENHAUER
27 POLE CREEK RD
WINSTON, MT 59647

Priority Date: DECEMBER 31, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.25 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:** 100.00

***Source Name:** SPOKANE CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESENW	21	9N	1W	BROADWATER

***Period of Diversion:** APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: R. MYLES DITCH

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
2		SESWSW	21	9N	1W	BROADWATER

***Period of Diversion:** APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: R. MYLES DITCH

***Period of Use:** APRIL 1 TO OCTOBER 31

***Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	22.00		S2SW	16	9N	1W	BROADWATER
2	27.00		NENW	21	9N	1W	BROADWATER
3	51.00		NE	21	9N	1W	BROADWATER
Total:	100.00						

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.

1044-00 1046-00

APPLICATION TO ADD A POINT OF DIVERSION AND CHANGE THE PLACE OF USE RECEIVED 12/18/2000. SEE 41I 1046-00.