

Montana Water Court  
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**FILED**

**DEC 12 2014**

**Montana Water Court**

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

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CLAIMANTS: H.T. Argabright; Sara A. Argabright

OBJECTORS: United States of America (Bureau of  
Reclamation); H.T. Argabright; Sara A. Argabright

**41I-265**  
41I 9868-00  
41I 9869-00  
41I 9875-00

**ORDER AMENDING AND ADOPTING MASTER'S REPORT**

**I. PROCEDURAL HISTORY**

This case involves three irrigation claims owned by H.T. and Sara Argabright (Claimants). Claims 41I 9868-00 and 41I 9869-00 were filed for water from the Missouri River. Claim 41I 9875-00 was filed for water from Crow Creek. The claims appeared in the Temporary Preliminary Decree for Basin 41I and received objections from the United States Bureau of Reclamation (BOR).

Case proceedings began in 1997. The parties reached an agreement on all objections and filed a Stipulation on March 20, 2000. That Stipulation was reviewed at length by the original Water Master, Carol Brown, and the Montana Department of Natural Resources and Conservation (DNRC). Ms. Brown retired before taking any final action on the Stipulation. Following her retirement in 2001, proceedings in this case ceased until 2008. In 2008 Water Master Jay Porteen continued the process of reviewing the Stipulation. On March 17, 2009, Water Master Porteen rejected the Stipulation after the parties failed to file sufficient documentation in support of their proposed agreement.

The case was then placed on hearing track and the parties were afforded approximately 90 days to perform discovery. Neither party performed any formal discovery.

On August 7, 2009, the BOR filed its Proposed Prehearing Order. In this document, the BOR asserted that each of the three claims had been abandoned, in whole or in part. On August 21, 2009, the Master informed the parties that he would adopt and combine each party's Proposed Prehearing Order. The Claimants vigorously objected to the BOR's abandonment contention, arguing that the BOR had not raised the issue of abandonment in its original objections. On November 12, 2009, the Master rejected the claimant's objections and adopted a Final Prehearing Order.

Hearing took place on November 16 through November 18, 2009, at the Broadwater County Courthouse in Townsend, Montana. At the request of the Claimants, proceedings included a site visit. The Claimants were represented from the beginning of this case up until adoption of the Final Prehearing Order. The Claimants were self-represented at the hearing. On February 2, 2010, the Claimants moved to reopen the hearing for the purpose of introducing new evidence. Claimants argued they were not aware of the actual period of nonuse alleged by the BOR until evidence was introduced at hearing. In order to address this evidence the Claimants requested additional proceedings to add this evidence to the record. The BOR opposed the motion. On March 26, 2010, the Master rejected the Claimants' motion, holding that the evidence could have been identified during formal discovery.

On July 10, 2013, the Master filed a Report recommending dismissal of claims 41I 9875-00 and 41I 9869-00 as abandoned. The Report found that the 1890 filed right represented by claim 41I 9868-00 had been abandoned but recommended changing this claim to a "use" right with a more junior priority date, a reduced flow rate, and fewer acres irrigated. On August 9, 2013, the Claimants filed objections to the Master's Report. Both parties submitted briefing on the objections to the Report. The Court held oral arguments on the objections on March 27, 2014.

## II. STANDARD OF REVIEW

The Montana Supreme Court has defined the standard of review for master's reports. "This Court applies the same standard of review to an adopted master's report that we do to any other district court order." *Conner v. City of Dillon*, 2012 MT 21, ¶6, 364 Mont. 8, 270 P.3d 75, citing *Schmidt v. Colonial Terrace Assocs.*, 215 Mont. 62, 66, 694 P.2d 1340, 1343 (1985). A trial or district court shall adopt a master's findings in a report unless they are clearly erroneous. M. R. Civ. P. 53(e)(2). See also *Fiedler v. Fiedler*, 266 Mont. 133, 145, 879 P.2d 675, 682 (1994). The Montana Supreme Court uses a three-part test in applying the clearly erroneous standard to a review of findings of facts.

The Court first reviews the record to determine if the findings are supported by substantial evidence; second, if the findings are supported by substantial evidence, we will determine if the trial court has misapprehended the effect of the evidence; and third, if substantial evidence exists and the effect of the evidence has not been misapprehended, the Court may still conclude that a finding is clearly erroneous when a review of the record leaves the Court with the definite and firm conviction that a mistake has been committed. *Fiedler*, 266 Mont. at 138, 879 P.2d at 678 citing *Interstate Prod. Credit Ass'n v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991).

Substantial evidence is defined as "evidence that a reasonable mind might accept as adequate to support a conclusion; it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Barrett v. Asarco, Inc.*, 245 Mont. 196, 200, 799 P.2d 1078, 1080 (1990); *Fiedler*, 266 Mont. at 138, 879 P.2d at 678.

"Thus, the Water Court reviews the Water Master's findings of fact for clear error and the Water Master's conclusions of law for correctness." M. R. Civ. P. 53(e)(2); *Heavirland v. State*, 2013 MT 313, ¶14, 372 Mont. 300, 311 P.3d 813.

## III. ISSUES

1. Did the Master err in pre- and post-hearing rulings that:
  - a. rejected the parties' proposed Stipulation;
  - b. allowed the BOR to pursue abandonment on all three claims;
  - c. denied the Claimants' request to reopen discovery; and

- d. denied the Claimants' request to reopen the case, post-hearing, and submit additional evidence?
2. Did the Master err in finding that claim 41I 9875-00 had been abandoned?
3. Did the Master err in finding that the 1890 and 1901 water rights represented by claims 41I 9868-00 and 41I 9869-00 had been abandoned?
4. Did the Master err in finding that claim 41I 9868-00 should be changed to a more junior priority date water right with a reduced flow rate and fewer acres irrigated?
5. Should claim 41I 9869-00 also be amended to a more junior priority date water right with a reduced flow rate and fewer acres irrigated?

#### **IV. PREHEARING AND POST-HEARING RULINGS**

The Water Master issued several prehearing and one post-hearing ruling that have had a significant effect on this case. These rulings are not based on the evidence before the Court and are therefore addressed separately from the Master's findings, conclusions, and recommendations resulting from hearing. The Claimants renewed their objections to these rulings in their objections to the Master's Report.

##### **A. Was the Master Justified in Rejecting the Parties' Stipulation?**

On March 20, 2000, the parties filed a Stipulation purporting to resolve all objections to all three claims in this case. Under the terms of the Stipulation 41I 9869-00 was withdrawn, the elements of claim 41I 9868-00 were significantly expanded, and claim 41I 9875-00 was maintained as claimed. On November 12, 2008, the Water Master issued a Notice of Deficient Documentation pursuant to Rule 17(b), W.R.Adj.R. In the Notice, the Water Master described a number of deficiencies in the proposed stipulation and ordered the parties to submit additional evidence to support the terms of the Stipulation as an accurate reflection of historical use or, in the alternative, to file an amended stipulation. At the request of the parties, the deadline for response filings was extended two times. No additional evidence or amended stipulation was filed by the third deadline. On March 17, 2009, the Master rejected the Stipulation and placed the case on hearing track.

The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Court. Rule 17(a), W.R.Adj.R. Further, if a settlement seeks to enlarge a water right without sufficient evidence supporting the expansion, the Court “shall provide notice to the settling parties of the deficient documentation and allow reasonable time for the parties to file supporting evidence.” Rule 17(b), W.R.Adj.R.

The parties proposed Stipulation sought to more than double the number of historically irrigated acres under claim 41I 9868-00 (from 650.00 to 1,404.20 acres). It also sought to add additional points of diversion and appeared to add irrigation attributed to other claims (including claims 41I 9869-00 and 41I 9875-00) to claim 41I 9868-00. The evidence before the Master did not support the proposed changes as within the historical use of this claim. Thus, he ordered the parties to submit additional supporting evidence. The parties were given four months to submit such evidence or an amended stipulation. When the parties failed to do so, the Master rejected the Stipulation and issued a Scheduling Order placing the case on a hearing track. This Order did not preclude settlement by the parties. The parties could still have filed supporting documents or an amended stipulation. The Order simply put the case on a hearing track in an effort to keep the process moving forward. The Master was well within his discretion in doing so. The Master’s decision to reject the Stipulation is affirmed.

**B. Did the Master Err in Allowing the BOR to Argue Abandonment?**

The 1996 BOR objections to the claims identified place of use, maximum acres and flow rate as the focus of the objections. The BOR did not indicate abandonment as an issue. In Section 8 of the BOR’s objections – where the objector states the changes they think should be made to the claim and why those changes should be made – the BOR stated:

The Bureau of Reclamation claims water rights in the Missouri River Basin, including Basin 41I. The Temporary Preliminary Decree reflects an irrigated acreage greater than the acreage that has historically been irrigated by this claimed water right (as determined by the Montana Department of Natural Resources and Conservation and a review of the County Water

Resources Survey). The claimed flow rate may need to be changed to account for any change in claimed acres.

Prior to hearing, the parties were involved in lengthy settlement negotiations that apparently did not include a discussion of abandonment. These discussions culminated in a settlement proposal that was ultimately rejected by the Water Master. The Claimants contend that BOR should be barred from arguing abandonment because the issue was not raised in its initial objections and because abandonment was not raised as an issue during prior settlement negotiations.

The Master found that the BOR filed timely objections to the claims. The Master also found that the Claimants had provided no authority holding that an objector who objects to place of use, maximum acres and flow rate cannot argue abandonment at the hearing on those objections.

Objections to water right claims are often based on limited information. The objector has typically done enough investigation to determine that an objection is warranted. As a case progresses, it is common for new information to change the nature of the objection. In most cases, that information serves to answer the objector's initial questions and lead to resolution of the objection. In some cases, it can lead to new issues, such as abandonment. These new issues are often identified during discovery. If that is the case, the issue may not be formally identified by an objector until it files a proposed prehearing order. That is what apparently happened in this case. It does not indicate the objector is acting inappropriately or is barred from raising this issue. It is presumed that there may be some changes from initial objections to the contentions listed in a proposed prehearing order. In fact, Rule 5(c) of the Montana Uniform District Court Rules includes the following standard language in a Prehearing Order:

**IT IS HEREBY ORDERED** that this pre-trial order shall supersede the pleadings and govern the course of the trial in this cause, unless modified to prevent manifest injustice.

IT IS HEREBY ORDERED that all pleadings herein shall be amended to conform to this pretrial order.<sup>1</sup>

This clearly contemplates changes in a party's contentions from the time of the original filing until final preparation for hearing.

Abandonment is not an element of a claim. This Court has previously held that "[a]bandonment is a legal theory that may be developed and applied to determine certain elements of the right." Master's Report, *In the Matter of the Adjudication of the Mussellshell River Drainage Below Roundup*, Case 40A-102 at p. 9, (MT Water Court Jun. 14, 1992). The BOR was entitled to raise the theory of abandonment prior to and during the hearing on its related objections to these claims. The Master's decision to allow the BOR to pursue abandonment is affirmed.

**C. Were the Claimants Denied a Meaningful Opportunity for Discovery?**

The BOR submitted its proposed prehearing order on August 7, 2009. In the proposed order, the BOR stated, among other things, that it would argue that the claims had been abandoned, in whole or in part. Claimants objected to this filing arguing the BOR should not be allowed to pursue abandonment. Claimants also requested that the Master reopen discovery to allow them to prepare to defend the claims against the abandonment alleged by the BOR. The Master allowed the BOR to pursue abandonment and refused to reopen discovery.

The Claimants assert they had no idea that abandonment was an issue on these claims until the BOR filed its proposed prehearing order, after discovery had closed. However, there are indications in the record that potential abandonment through nonuse had been a part of the discussion long before the BLM's proposed prehearing order.

All three claims appeared in the Temporary Preliminary Decree for this Basin with remarks that tend to indicate a lack of historical use. Claim 41I 9868-00 and 41I 9869-00 both included a remark noting 0.00 acres irrigated in the 1956 Broadwater County Water Resource Survey. A remark indicating 0.00 acres irrigated on a historical data source used to confirm the terms of a claim is one of the most common indicators of potential

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<sup>1</sup> It is noted that the Claimants included this exact language in their proposed prehearing order.

abandonment. Claim 41I 9875-00 appeared with a remark indicating all irrigation on the claimed place of use came from the Broadwater-Missouri Canal. This is a clear indication that there was no irrigation on this place of use from the claimed source, Crow Creek. Again, this is an indicator of potential abandonment.

In a February 11, 1999 Memorandum, DNRC Water Resource Specialist Jim Gilman discussed his review of all three claims. In regards to claim 41I 9868-00, Gilman stated the Water Resource Survey did not indicate there was any private water rights from the Missouri River associated with this ranch. In a December 28, 2000 Order, Water Master Carol Brown states, "The evidence thus far in this case demonstrates that [Claimants' predecessors] discontinued using much of the private water originally appropriated for the ranch when the Broadwater-Missouri Canal was built." These two documents appear to give a strong indication that nonuse and potential abandonment could be an issue in this case. These issues became central to the case when the Master rejected the parties' Stipulation. When it became clear that the case would not settle and was moving toward hearing, the Claimants could have availed themselves of the court-ordered discovery period to clarify the BOR objections.

The Water Master determined that both the Claimant and BOR were given ample opportunity to engage in discovery and chose not to do so. On November 12, 2009, the Water Master denied the request for further discovery stating:

If the Claimants were surprised at the United States' abandonment contention in the United States' Proposed Prehearing Order, it was a self-inflicted surprise. The Claimants (and Objector) were given the opportunity to conduct meaningful pretrial discovery by issuance of the March 17, 2009 Scheduling Order. The Claimants had the opportunity to get to the bottom of all of the United States' contentions in case 41I-265 through the formal discovery process, and ultimately chose not to.

Order Modifying Final Prehearing Order, *Argabright v. the United States (Bureau of Reclamation)*, Case 41I-265 at p. 5 (MT Water Court Nov. 12, 2009).

A district court has broad discretion in determining the course and scope of discovery. *See e.g. Hawkins v. Harney*, 2003 MT 58, ¶17, 314 Mont. 384, 66 P.3d 305.



In this adjudication, water masters have the same discretion. Thus, a court or master's decision concerning discovery matters are reviewed for an abuse of discretion. "A district court abuses its discretion when it acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice." *State v. Riggs*, 2005 MT 124, ¶18, 327 Mont. 196, 113 P.3d 281.

Given the broad discretion afforded a master in matters of discovery, the Court cannot conclude that Master Porteen abused his discretion by refusing to re-open the discovery period. *Montanans v. State*, 2006 MT 277, ¶36, 334 Mont. 237, 146 P.3d 759 (court did not abuse its discretion in denying additional discovery where the "record shows that Proponents failed to utilize the time allocated by the court to conduct whatever discovery time allowed, or to avail themselves of the procedural remedies available to them."). While the Master's actions may appear harsh in retrospect, the Court is not in a position to second guess this decision, particularly where the complaining party failed to conduct any discovery at all. Their assertion of surprise at the abandonment issue is not compelling. The Master's decision to not reopen discovery is affirmed.

**D. Did the Master Err in Denying the Claimants' Motion to Reopen the Case?**

Once the Master approved the final prehearing order, it was established that the issue of abandonment would be raised by the BOR at hearing. Rule 16(d), M.R.Civ.P. (prehearing orders control the subsequent course of the action). Both parties addressed abandonment of the claims during the hearing. The Claimants introduced evidence and called witnesses to rebut the BOR's claim of abandonment. After the hearing concluded, the Claimants moved the Court to reopen the hearing to introduce additional evidence, including witness testimony, to further rebut the BOR's abandonment contention. Claimants' motion was not made pursuant to any rule or statute. The Claimants did not file a brief in support.

Oral arguments on the motion were held on March 18, 2010. Claimants argued that the new evidence was not discoverable until they knew the dates of abandonment alleged by the BOR, which they did not discover until the hearing. The BOR objected to

introduction of the new evidence, arguing that the evidence was either untimely, irrelevant or both. On March 26, 2010, the Master rejected the Claimants' motion, again holding that the Claimants' newly discovered evidence could have been identified during formal discovery and that Claimants had not provided any arguments or authority in support of their motion.

Although not identified by the Claimants, the apparent grounds for reopening the record is newly discovered evidence. However, the party seeking a new trial must show the newly discovered evidence could not, with reasonable diligence, have been discovered and produced at trial. Section 25-11-102(4), MCA; *Brunner v. LaCasse*, 241 Mont. 102, 104, 785 P.2d 201, 212 (1990) ("not only could appellants have obtained this data from any of a number of other sources, copies of the closing documents were no doubt available through discovery."). A review of the evidence submitted by the Claimants with their motion shows that the evidence was discoverable prior to hearing.

While the Court is sympathetic to the fact the Claimants represented themselves *pro se* at hearing, it is not convinced that the Master abused his discretion by failing to reopen the case to admit additional post-hearing evidence. The Claimants were represented by counsel until the hearing and were given ample opportunity to conduct prehearing discovery. The Claimants ultimately chose not to conduct discovery. This Court and other courts have previously denied efforts to reopen proceedings where parties failed to take advantage of the discovery period. Order Denying Motion to Reopen Case, *Saylor v. Lower Teton Joint Objectors*, Case 41O-128 at p. 6 (MT Water Court Sept. 12, 2013); *In re Marriage of Armstrong*, 1994 Mont. Dist. LEXIS 781, at \*1 (Mont. Dist. Ct. 4<sup>th</sup> Jud. Dist. Jun. 13, 1994) ("While this Court grants some deference to *pro se* litigants, it cannot and will not effectively reopen these proceedings in order for Respondent to present evidence which could have been presented at the earlier hearing.").

During the three-day hearing, Claimants presented a significant amount of evidence – including exhibits and witness testimony – to attempt to rebut the BOR's contentions. It is apparent from the hearing record that Claimants understood the BOR

abandonment argument. For example, Claimant H.T. Argabright's arguments at hearing regarding the admission of certain exhibits:

There are pertinent facts that are included in there that have – are domain [SIC] to our issue, in terms of this particular case. The Bureau is alleging abandonment after 1941 and that's the starting date of the Broadwater-Missouri. And through the information presented and remarks, I believe that we can show that there has been a continuation of use and it's a historical place of use for the property that's included within the boundaries of this claim, that I am most interested in. (Argabright Testimony, Hrg. Day 3, Transcript at 39-40.)

Reopening the case would give the Claimants a second opportunity to rebut the BOR's evidence. The record before the Court provides little support for the Claimants' request. They are not seeking to submit newly discovered evidence. They are attempting to add additional evidence that was readily available to them before the hearing. The Master did not abuse his discretion by refusing to grant the request. The Master's decision to not reopen the record and accept further evidence is affirmed.

#### **V. ABANDONMENT OF CLAIMS 41I 9868-00, 41I 9869-00 AND 41I 9875-00**

The controlling and fundamental principle upon which water rights are perfected and continue to possess legal validity is that of beneficial use; "water rights cease when the water is no longer applied to a beneficial use." *Matter of Adjudication of Musselshell River Above Roundup*, 255 Mont. 43, 47, 840 P.2d 577, 579 (1992); *79 Ranch Inc. v. Pitsch*, 204 Mont. 426, 432, 666 P.2d 215, 218 (1983); *In re Adjudication of Water Rights of the Clark Fork River*, 254 Mont. 11, 15, 833 P.2d 1120, 1123 (1992).

"Abandonment of a water right is a question of fact." *79 Ranch Inc.*, 204 Mont. at 431, 666 P.2d at 217. Two elements are required for the abandonment of a water right: (1) nonuse of the water associated with the water right; and (2) the intent to abandon the water right. *79 Ranch Inc.*, 204 Mont. at 432, 666 P.2d at 218 (citations omitted). In *79 Ranch Inc.*, the Court restated the standard and burden of proof for the abandonment of water rights. Under the circumstances of that case, the Court found that forty years of continuous nonuse was strong evidence of an intent to abandon, and held that: "In effect,

such a long period of continuous nonuse raises the rebuttable presumption of an intention to abandon, and shifts the burden of proof on to the nonuser to explain the reasons for nonuse.” *79 Ranch Inc.* 204 Mont. at 432-33, 666 P.2d at 218.

In a subsequent case, the Court reiterated the standard and reiterated the principle that to “rebut the presumption of abandonment, there must be established some fact or condition excusing the long period of nonuse, not mere expressions of hope or desire, reflecting a ‘gleam-in-the-eye philosophy’ regarding future use of the water.” *Clark Fork River*, 254 Mont. at 15, 833 P.2d at 1123 citing *79 Ranch Inc.*, 204 Mont. at 433-34, 666 P.2d at 219.

In this case, the BOR had the initial burden at trial to prove the first element of abandonment. The Master determined that the BOR established a long period of continuous nonuse for each of the claims, creating a presumption of an intent to abandon the water rights and shifting the burden to the Claimants to explain the nonuse. The Master further found that this presumption of abandonment was not rebutted by the Claimants.

**A. Claim 41I 9875-00 (Crow Creek Right)**

As claimed, 41I 9875-00 is an 1885 right to irrigate 650.00 acres from Crow Creek. At hearing, the BOR introduced evidence and testimony generally showing that irrigation practices in the area encompassing claim 41I 9875-00 changed substantially after the Broadwater-Missouri Canal (BMC) began delivering water in 1941. In 1938, approximately 280.00 acres of the claimed place of use were irrigated from Crow Creek. (Guenthner Testimony, Hrg. Day 2, Transcript at 70). By 1941, the BMC cut off Crow Creek and was the only means for delivering water to the same property. At the same time, it was still possible to account for Crow Creek deliveries through the BMC. (Guenthner Testimony, Hrg. Day 2, Transcript at 70).

Crow Creek water users petitioned for a Water Commissioner almost yearly between 1913 and 2001. The Commissioner filed annual reports on water usage with the District Court. These Water Commissioner reports show that Claimants’ predecessors received and were billed for Crow Creek water in 1940, 1952, 1953, 1972, 1973 and

1974. (U.S.-111; Frasier Testimony, Hrg. Day 3, Transcript at 68). Neither the Stanfills (who owned the property from 1962 until 1998) nor the Claimants (who purchased the property in 1998) are mentioned in the reports between 1974 and 2001. The Master placed substantial weight on the commissioner records and found the records sufficient to establish a long period of continuous nonuse starting in 1975 and lasting at least until 2001, a period of 26 years. The Master found this long period of continuous nonuse sufficient to shift the burden to the Claimants to rebut the presumption of an intent to abandon claim 41I 9875-00. Holding that the Claimants failed to meet their burden, the Master found that the claim had been abandoned.

At hearing, the Claimants argued excess water delivered through the BMC could be considered Crow Creek water. Crow Creek empties into the BMC. The Master rejected this argument finding that this water would still have appeared in the Commissioner records if it was Crow Creek water rather than Missouri River water.

In their objections, to the Master's Report, the Claimants seek to rebut the presumption of abandonment by raising the issue of availability of water. They argue that the BOR offered no evidence showing that Crow Creek water was physically available to the Claimants between 1975 and 2001. This lack of water could explain the long period of continuous nonuse and could excuse the nonuse. However, this was not the BOR's burden.

"[A] long period of continuous nonuse raises the rebuttable presumption of an intention to abandon, [the water right] and shifts the burden of proof onto the nonuser to explain the reasons for nonuse." *79 Ranch Inc.*, 204 Mont. at 432-33, 666 P.2d at 218 (emphasis added). In the present case, the established 26-year period of nonuse is strong evidence of intent to abandon and is sufficient to shift the burden to Claimants to explain the reasons for nonuse. *See 79 Ranch Inc.*, 204 Mont. 426, 666 P.2d 215; *See Smith v. Hope Mining Co.*, 18 Mont. 432, 45 P. 632, (1896). Claimants do not appear to question nonuse after 1974. They did not introduce any evidence to refute the nonuse that is apparent in the water commissioner records. They did not introduce any evidence regarding the availability of water. In sum, they did not introduce any evidence

explaining the reasons for nonuse. They did not meet their burden of proof and therefore failed to rebut the intent to abandon the water right represented by claim 41I 9875-00.

There is sufficient evidence in the record to support the Master's findings and legal conclusions regarding abandonment. The Master did not misapprehend or misapply the facts. The Master's interpretation of controlling law is correct. The Master's conclusion that claim 41I 9875-00 had been abandoned is affirmed.

**B. Claims 41I 9868-00 and 41I 9869-00 (Missouri River)**

Claim 41I 9869-00 represents a 1901 right to irrigate a 650 acre place of use from the Missouri River. The claim is based on a filed appropriation by C.B. Nolan on behalf of himself and the Hossfeld Agricultural & Stock Raising Company for 2,000 miner's inches or 50.00 CFS. (U.S.-103). The Statement of Claim asserts that the Claimants have historically pumped 2,000 miner's inches of water from the Missouri River at two points of diversion and diverted the water through a ditch to the place of use. The Statement of Claim does not mention the BMC or list the canal as a means of diversion.

Claim 41I 9868-00 represents an 1890 right to irrigate a 650-acre place of use from the Missouri River, the same place of use as claimed under 41I 9869-00. The claim is based on a filed appropriation by Charles Hossfeld for 5,000 miner's inches or 125.00 CFS. (U.S.-102). The Statement of Claim asserts the claim pumps water from the Missouri River at the same two points of diversion as 41I 9869-00. The Statement of Claim does not mention the BMC or list the canal as a means of diversion.

The evidence at hearing shows that both of these water rights were initially developed as flood rights with points of diversion some distance up the Missouri River from the pump sites that appeared on the claims in the Temporary Preliminary Decree. While the exact location of the points of diversion and ditches was confusing, BOR expert Scott Guenther was able to determine that diverting the water rights from the original points of diversion through a series of ditches to the claimed place of use was possible. (Guenther Testimony, Hrg. Day 2, Transcript at 50). Mr. Guenther opined that the claims had separate points of diversion but eventually joined in the same ditch before reaching the place of use. Review of 1947 and 1955 aerial photographs show the

ditch used for claim 41I 9869-00 was severed by a highway bridge project between these dates and was never reconnected. (Guenthner Testimony, Hrg. Day 2, Transcript at 94). However, use of claim 41I 9869-00 ceased long before 1955. In fact the evidence at hearing shows use of both claims likely ceased use in the mid-1930s or early 1940s.<sup>2</sup> (U.S.-65; Stanfill Affidavit, "Water flowed through these ditches up until the mid 1930s when the Broadwater Missouri water project was completed in about 1939 ... These ditches, however, are not still in use.") (U.S.-71; Smith Affidavit, "The water flowed in this ditch each season until they started diverting water at the Toston Dam."). The 1955 Broadwater County Water Resources Survey (WRS) does not list any appropriation in use that would correspond to either of the Missouri River rights. (U.S.-82).

The Master found that use of claims 41I 9868-00 and 41I 9869-00 ended in 1941 when the BMC came into use. At this point, the Claimants' predecessors began relying on contract water from the BMC to irrigate the claimed places of use. Claimants acknowledge the place of use for claims 41I 9868-00 and 41I 9869-00 is irrigated using contract water from the BMC. This irrigation is represented in claim 41I 9460-00, which is owned by the DNRC. This claim represents the water right used by the Broadwater-Missouri Project. The project delivers water through the BMC. The claimed places of use for claims 41I 9868-00 and 41I 9869-00 are included in the service area for claim 41I 9460-00.

Eventually use of this contract water was supplemented with water pumped from the Missouri River. The Master found this use of Missouri River water represented a new water right, not a continuation of the original 1890 or 1901 appropriations claimed in 41I 9868-00 and 41I 9869-00. The Claimants presented two arguments to show their Missouri River water rights continued to be used after 1941:

1. Excess water delivered through the BMC should be viewed as water delivered under claims 41I 9868-00 and 41I 9869-00;

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<sup>2</sup> By agreement of the parties, the evidence placed in the record at hearing included a number of affidavits and one deposition. There were actually only a few witnesses that testified at hearing.

2. The two pump sites that appear on these claims represent a change to the point of diversion, not new appropriations of water.

### **1. Use of the BMC for these Claims**

The only pre-1973 evidence of excess water being diverted via the BMC canal comes from the affidavit of Tharen Garrett, who worked for the owner of the property at some unidentified point between 1956 and 1963. (U.S.-69). Garrett's affidavit states that they "always had more water delivered to the property through the canal than was allotted by the Broadwater Missouri Water Users Association." (U.S.-69). The affidavit does not indicate the excess water was diverted under any specific water right, how much excess water was delivered, or where it was used. In other words, there is no evidence indicating that these excess deliveries were attributable to claims 41I 9868-00 and 41I 9869-00. As pointed out by the Master, the Claimants provided no evidence showing any agreement between their predecessors and the BMC to deliver private water rights. Neither claim lists the Toston Dam as a point of diversion or the BMC as a means of diversion. Excess water in the canal appears to represent a management decision that assured the full amount of contract water actually reached the Claimants' turnout. In order to accomplish this goal a certain amount of excess water in the canal is inevitable. There is nothing in the record indicating this water was diverted through the BMC in order to deliver some unquantified portion of claims 41I 9868-00 and 41I 9869-00 to the Claimants. There is no evidence of any other attempts by the various owners of the property to use the Missouri River rights between 1941 and 1956. There is no evidence, showing any other action or conduct by any owner, to indicate an intent to maintain either water right during this period of 15 years.

Based on the record from hearing, there was no use of claims 41I 9868-00 and 41I 9869-00 from 1941 to 1956, a period of 15 years. What constitutes a sufficient period of continuous nonuse to raise a presumption of abandonment is a question of fact. A period of as few as nine years of continuous nonuse can be "... very potent evidence, if it stood alone, of an intention to abandon." *Smith*, 18 Mont. at 438, 45 P. 632 at 634. In most



cases, the period of nonuse is longer. In *79 Ranch Inc.*, the Court discussed the “modern trend” regarding nonuse:

It should be noted that in section 85-2-404, MCA, the legislature has provided that ten successive years of nonuse while water was available creates a *prima facie* presumption of abandonment. This presumption will be applied after all existing water rights have been adjudicated under part 2 of Title 85, MCA. In our holding, here, we are simply recognizing this general, modern trend, and providing an approach for the determination of abandonment of water rights consistent with the express intent of our legislature. *79 Ranch Inc.*, 204 Mont. at 434, 666 P.2d at 219.

Based on *Smith*, *79 Ranch Inc.*, and numerous other decisions, the 15 years of continuous nonuse established for claims 41I 9868-00 and 41I 9869-00 from 1941 to 1956, is sufficient to raise a rebuttable presumption of abandonment. Therefore, the Claimants had the burden of proof to explain and excuse that nonuse. Rather than take this approach, Claimants chose to assert the claims were used during this period of time through excess diversions in the BMC. The Master rejected this argument, as does this Court.

## **2. Change to Point of Diversion as Intent to Maintain the Claims**

The Claimants also argue that installing the first pump in 1957 should be viewed as a change in point of diversion, not a new appropriation. In other words, installing the pump is an expression of an intent to retain the 1890 and 1901 water rights that is sufficient to excuse the previous 15 years of nonuse.

A finding of abandonment depends on the entire factual circumstances surrounding a case. *Heavirland*, ¶36. A review of the scant factual record relating to the pump installation does not offer support for the Claimants’ contention.

George Harrigfeld’s family owned and operated Claimants’ ranch from 1956 to 1963. Harrigfeld irrigated extensively from the BMC, with probably 75% of the irrigation water coming from the BMC during the time they owned the property. The

remaining 25% came from two sources, the Missouri River and a slough located near the main house. (U.S.-68; Affidavit of George C. Harrigfeld).<sup>3</sup>

Harrigfeld's affidavit provides only basic information. He does not indicate when he began irrigating from the river or slough. He does not state that installing the pump in the river was intended to continue use of existing water right claims. There is no indication that Harrigfeld was even aware of the 1890 and 1901 appropriations.

George Harrigfeld's conduct between 1956 and 1963 does nothing to explain or excuse nonuse from 1941 to 1957. There is no indication that Harrigfeld was changing the point of diversion for two senior rights that had once been used on the property. Rather, it appears he was taking advantage of available technology to supplement his contract water. Harrigfeld was appropriating a new water right.

The Master's finding of abandonment of the 1890 and 1901 filed water rights represented by claims 41I 9868-00 and 41I 9869-00 is supported by substantial evidence. The Master did not misapprehend the effect of that evidence. Based on this evidence, the Master's interpretation of controlling law is correct. The 1890 and 1901 filed water rights represented by claims 41I 9868-00 and 41I 9869-00 have been abandoned.

#### **VI. Junior Use Rights for Claims 41I 9868-00 and 41I 9869-00**

Although the Master found that both of the old Missouri River rights had been abandoned, he determined that Claimants' predecessor, George Harrigfeld, established a "use" right when he installed a pump on his property in late 1956 and first used that pump to divert water at the start of the 1957 irrigation season. The Master provided the terms for this 1957 use right. While the Court agrees that the Claimants' predecessors did establish use rights after 1956, the Master's recommendation for a single junior use misapprehends the effect of the evidence.

In 1963, Harrigfelds sold the property to Perry J. (Jed) Stanfill and Peggy L. Stanfill. The Stanfills owned the property until selling to the Claimants in 1998. Two affidavits executed jointly by the Stanfills were admitted into evidence. (U.S-64, -65).

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<sup>3</sup> This affidavit was executed by George Harrigfeld, Junior, who is the son of the original appropriator. According to Jed Stanfill's deposition (U.S.-107) the elder Mr. Harrigfeld died in about 1962.

Jed Stanfill's November 13, 2009 deposition was also admitted into evidence. (U.S.-107). These three exhibits provide critical evidence supporting two "use" water rights.

Harrigfelds installed the first 3,000 gpm pump in late 1956 and put it to use at the start of the 1957 irrigation season (1957 pump). The point of diversion was located in Section 33, T6N, R2E. At some point prior to 1973, Jed Stanfill installed a second 3,600 gpm pump in Section 33 a short distance down river from the first pump (1973 pump). Both pumps serviced the same property. (U.S.-64, -107). In 1976, Stanfill installed a third 2,200 gpm high pressure pump in Section 28 even further down the river and again serviced the same property (1976 pump). Stanfill applied for and received a DNRC change authorization for this pump. The Change Authorization served to add a new point of diversion to claims 41I 9868-00 and 41I 9869-00.<sup>4</sup> (U.S.-50) The Change Authorization did not increase the flow rates or change the place of use.

In 1984, Stanfill quit using the original 3,000 gpm pump. (U.S.-107, -52). However, by 1984, Stanfill had already installed the 1976 pump and was therefore able to continue pumping most of the 6,600 gpm flow rate appropriated in 1957 and 1973. The Master found that ending use of the 1957 pump in 1984 served to abandon that 3,000 gpm flow rate and point of diversion. He recommended a single use right with a 1957 priority date and a 3,600 gpm flow rate. This misapprehends the effect of the evidence.<sup>5</sup> In fact, Stanfill acquired one 3,000 gpm use right from Harrigfelds and developed a second 3,600 gpm use right himself. Therefore, prior to July 1, 1973, Stanfill was using two new appropriations with a 6,600 gpm total flow rate. When Stanfill installed the 1976 pump, he was able to move 2,200 gpm of this total flow rate to this new point of diversion. After July 1, 1973, a DNRC permit was required for all new appropriations. Stanfill did not have a permit and therefore did not acquire an additional right for 2,200 gpm. The 1976 pump represents a change to existing water rights that required a DNRC

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<sup>4</sup> Although Stanfill began using this third pump in 1976, he did not acquire the DNRC Change Authorization until 1996 (U.S.-50 at 5).

<sup>5</sup> The Master provided no explanation for keeping the 1957 priority date while using the 1973 flow rate. If Stanfill abandoned the 1957 right in 1984, he should have lost that priority date.

change authorization. The Change Authorization acquired for the 1976 pump allowed for a new point of diversion, it did not serve to increase the total flow rate by 2,200 gpm.

When Stanfill stopped using the 1957 pump in 1984, his total pump capacity went from 6,600 gpm to 5,800 gpm,<sup>6</sup> a drop of 800 gpm. However, Stanfill still had the ability to pump all of the 1957 appropriation and most of the 1973 appropriation. The evidence indicates Stanfill and the Claimants maintained the 5,800 gpm capability from 1984 to the present time, a period of about 30 years.

Applying the same abandonment analysis used above shows a partial abandonment of the total flow rate of the two use rights. The Claimants and their predecessors have not used all 6,600 gpm for 30 years and offered no explanation for this nonuse other than Stanfill's deposition testimony stating that the original pump was old and the new pump did a better job. (U.S.-107) The Claimants' historical flow rates are therefore limited to diversion capacity – 5,800.00 gpm. *Bailey v. Tintinger*, 45 Mont. 154, 178, 122 P. 575, 583 (1912).

The Court assumes Stanfill would choose to move his most senior use right rather than abandon that flow rate as recommended by the Master. Even though he ceased using the 1957 pump, the Court presumes he moved that flow rate to the other two pump sites. Therefore the Claimants are entitled to two junior use rights:

1. a 1957 right for 3,000 gpm first diverted at that time; and
2. a 1973 right for 2,800 gpm representing the remaining capacity of the two pumps that are currently diverting from the Missouri River.

Claimants can use these two use rights through their historical point of diversion and their permitted point of diversion at their discretion.

The Court also disagrees with the Master's finding on the number of acres irrigated by the Claimants' pumps. In his deposition, Jed Stanfill testified that the 1976 pump was a replacement for the earlier pumps. Adding the 1976 pump cut down on the distance water was transported from point of diversion to place of use. Stanfill was

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<sup>6</sup> 3,000 + 3,600 = 6,600 gpm (1957 pump and 1973 pump)  
3,600 + 2,200 = 5,800 gpm (1973 pump and 1976 pump)  
Total flow rate reduction = 800 gpm

redoing his sprinkler system at the time. Placing the new pump in Section 28 served to accomplish this goal. Stanfill did not state the new site was used to irrigate new ground, only to place a pump closer to the existing field.

The Master found that the best evidence of the number of historically irrigated acres for a junior use right that began pumping water from the Missouri River in 1957 was a February 11, 1999 Memorandum from DNRC claim examiner Jim Gilman. (U.S.-62) The Court agrees. This Memorandum is the best review of the historically irrigated acres that relate directly to pump use. The Memorandum confirms Jed Stanfill's deposition testimony. The Master found that only 269.00 acres in Section 33 could be attributed to historical pump use. He declined to add an additional 99 acres Gilman identified in Section 28 because this property was irrigated exclusively with the 1976 pump. The Master found that any use of this pump constituted a new appropriation of water.

As discussed above, the 1976 pump is simply a new point of diversion permitted by the DNRC. Therefore, it should not be presumed that the pump is a new appropriation that irrigated new property. Rather, it was a better way to irrigate the same property. (U.S.-107) The Court finds that the Master misapprehended the evidence regarding historical place of use and acres irrigated. The Claimants are entitled to junior use rights for irrigation not only for the 269.00 acres in Section 33, but also the 99.00 acres in Section 28.

Finally, the Courts review of the 41I 9868-00 and 41I 9869-00 claim abstracts discovered a scrivener's error in the point of diversion legal description. The current legal description incorrectly places the point of diversion for both claims in Township 5 North rather than Township 6 North. The Court finds that correcting this error has no potential for adverse affect on any other water user. Therefore, notice of the change pursuant to section 85-2-233(6), MCA, is not required.

Claims 41I 9868-00 and 41I 9869-00 shall be amended to reflect the following junior use rights:

**41I 9868-00**

**Priority Date:** ~~April 24, 1890~~ May 1, 1957\*

\* The Master set the priority date at the first day of the claimed period of use. The Court finds this is the date of first use based on the best evidence. (U.S.-107).

**Type of Historical Right:** Filed Use

**Flow Rate:** ~~24.62 cfs~~ 6.68 cfs (3,000.00 gpm)\*\*

\*\* The Court differs from the Master and finds the historical flow rate is the 3,000 gpm capacity of the 1957 pump. (U.S.-64)

**Point of Diversion:** SENWSE Sec. 33, ~~T5N~~ T6N, R2E\*\*\*

\*\*\* The Master found the point of diversion for the 1957 pump was no longer in use and should be removed from the claim. The Court agrees. (U.S.-107) The claim is limited to the one point of diversion listed above and the change authorization point of diversion.

**Acres Irrigated:** ~~650.00 acres~~ 368.00 acres\*\*\*\*

\*\*\*\* The Court differs from the Master and finds 368.00 historically irrigated acres. (U.S.-62)

**Remarks:**

THIS CLAIM IS SUBJECT TO A CHANGE APPLICATION THAT HAS BEEN APPROVED BY THE DNRC. THIS APPLICATION ALLOWS FOR A SECOND POINT OF DIVERSION IN THE NESW OF SECTION 28, T6N, R2E, BROADWATER COUNTY. THE CLAIM IS LIMITED TO THE HISTORIC FLOW RATE OF 6.68 CFS (3,000.00 GPM).

See the attached claim abstract for all elements of this water right claim.

**41I 9869-00**

**Priority Date:** ~~April 1, 1901~~ June 30, 1973\*

\* The Claimants are entitled to the last day of the identified period. Stanfill testified in his deposition that he installed the second pump between 1962 and 1973. However, he could not acquire a use right after June 30, 1973. Therefore the last day Stanfill could have appropriated this right as an existing right is June 30, 1973. (U.S.-107; See also Section 85-2-102(12), MCA; *Vidal v. Kensler*, 100. Mont. 592, 598, 561 P.2d 235, 238 (1935))

**Type of Historical Right:** Filed Use

**Flow Rate:** ~~11,049.50 gpm~~ 6.24 cfs (2,800.00 gpm)\*\*

\*\* Total pump capacity (5,800 gpm) minus 1957 flow rate (3,000 gpm) equals 2,800 gpm. (U.S.-64)

**Point of Diversion:**

SEWSE Sec. 33, T5N T6N, R2E\*\*\*

\*\*\* The Master found the point of diversion for the 1957 pump was no longer in use and should be removed from the claim. The Court agrees. (U.S.-107) The claim is limited to the one point of diversion listed above and the change authorization point of diversion.

**Acres Irrigated:**~~650.00 acres~~

368.00 acres\*\*\*\*

\*\*\*\* The Court differs from the Master and finds 368.00 historically irrigated acres. (U.S.-62)

**Remarks:**

THIS CLAIM IS SUBJECT TO A CHANGE APPLICATION THAT HAS BEEN APPROVED BY THE DNRC. THIS APPLICATION ALLOWS FOR A SECOND POINT OF DIVERSION IN THE NESW OF SECTION 28, T6N, R2E, BROADWATER COUNTY. THE CLAIM IS LIMITED TO THE HISTORIC FLOW RATE OF 6.24 CFS (2,800.00 GPM).

See the attached claim abstract for all elements of this water right claim.

**CONCLUSION****Prehearing and Post-Hearing Rulings**

The Court finds that all of the Master's pre- and post-hearing rulings were within his discretion and are supported by the record. All of these rulings are affirmed.

**Abandonment**

The Court finds the Master's Findings of Fact on the issue of abandonment of the Crow Creek right 41I 9875-00 and the 1890 and 1901 filed rights represented by 41I 9868-00 and 41I 9869-00 are based on substantial evidence. The Master correctly interpreted the evidence. The Master's Conclusions of Law are correct on the abandonment issue.

**Junior Use Rights**

The Court concludes the Master's Findings of Fact misapprehend the effect of the evidence on the issue of the Claimants' junior use rights. As a result of this misapprehension, the Master's Conclusions of Law are not correct.

Claimants H.T. Argabright and Sara A. Argabright are entitled to a May 1, 1957 use right for claim 41I 9868-00 and a June 30, 1973 use right for claim 41I 9869-00 with the terms found on the attached water right claim abstracts.

**ORDER**

Accordingly, it is


ORDERED that claim 41I 9875-00 is dismissed as abandoned.

ORDERED that the 1890 and 1901 water rights represented by claims 41I 9868-00 and 41I 9869-00 have been abandoned. However, the Claimants are entitled to two junior use rights. Claims 41I 9868-00 and 41I 9869-00 are amended as stated in this Order to represent these two junior rights.

ORDERED that the Master's Report for Case 41I-265 is Adopted in Part and Amended in Part as reflected in this Order.

A Post Decree Abstract of Water Right Claim for each claim addressed in this Order is attached to confirm that the changes identified in this Order have been made in the state's centralized water right record system.

DATED this *12* day of *December* 2014.

  
Douglas Ritter  
Associate Water Judge

HT Argabright  
Sara A. Argabright  
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Toston, MT 59643

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

IMPORTANT NOTICE

AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 411 9868-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: H T ARGABRIGHT  
803 RIVER RD  
TOSTON, MT 59643 9754

SARA A ARGABRIGHT  
803 RIVER RD  
TOSTON, MT 59643 9754

\*Priority Date: MAY 1, 1957

\*Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

\*Flow Rate: 3,000.00 GPM  
(6.68 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: 368.00

Source Name: MISSOURI RIVER

Source Type: SURFACE WATER

\*Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr</u> | <u>Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|------------|------------|------------|------------|------------|---------------|
| 1         |                 | SENWSE     | 33         |            | 6N         | 2E         | BROADWATER    |

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: MAY 1 TO OCTOBER 31

\*Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|------------|------------|------------|------------|---------------|
| 1         | 99.00        |                 | S2         | 28         | 6N         | 2E         | BROADWATER    |
| 2         | 269.00       |                 |            | 33         | 6N         | 2E         | BROADWATER    |

Total: 368.00

Remarks:

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION COMPLETED 09/05/96. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41I-G(W)009868-00 .

THIS CLAIM IS SUBJECT TO A CHANGE APPLICATION THAT HAS BEEN APPROVED BY THE DNRC. THIS APPLICATION ALLOWS FOR A SECOND POINT OF DIVERSION IN THE NESW OF SECTION 28, T6N, R2E, BROADWATER COUNTY. THIS CLAIM IS LIMITED TO THE HISTORIC FLOW RATE OF 6.68 CFS (3,000 GPM).

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

IMPORTANT NOTICE

AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 411 9869-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: H T ARGABRIGHT  
803 RIVER RD  
TOSTON, MT 59643 9754

SARA A ARGABRIGHT  
803 RIVER RD  
TOSTON, MT 59643 9754

\*Priority Date: JUNE 30, 1973

\*Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

\*Flow Rate: 2,800.00 GPM  
PRIMARILY A DIRECT FLOW SYSTEM; FLOW RATE RETAINED.  
(6.24 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: 368.00

Source Name: MISSOURI RIVER  
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         |                 | SE             | 33         | 6N         | 2E         | BROADWATER    |

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: MAY 1 TO OCTOBER 31

\*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         | 99.00        |                 | S2             | 28         | 6N         | 2E         | BROADWATER    |
| 2         | 269.00       |                 |                | 33         | 6N         | 2E         | BROADWATER    |

Total: 368.00

**Remarks:**

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION COMPLETED 09/05/96. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41I-G(W)009868-00 .

THIS CLAIM IS SUBJECT TO A CHANGE APPLICATION THAT HAS BEEN APPROVED BY THE DNRC. THIS APPLICATION ALLOWS FOR A SECOND POINT OF DIVERSION IN THE NESW OF SECTION 28, T6N, R2E, BROADWATER COUNTY. THE CLAIM IS LIMITED TO THE HISTORIC FLOW RATE OF 6.24 CFS (2,800 GPM).

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 411**

**IMPORTANT NOTICE**

**\*\*\*THIS WATER RIGHT CLAIM HAS BEEN DISMISSED\*\*\***

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number:** 411 9875-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** DISMISSED

**Owners:** H T ARGABRIGHT  
803 RIVER RD  
TOSTON, MT 59643 9754

SARA A ARGABRIGHT  
803 RIVER RD  
TOSTON, MT 59643 9754

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** CROW CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE 411 TEMPORARY PRELIMINARY DECREE.