

Montana Water Court
PO Box 1389
Bozeman MT 59771-1389
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FILED

OCT 05 2010

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER - FROM HOLTER DAM TO SUN RIVER - BASIN 41QJ

COPY

CLAIMANT: City of Great Falls

41QJ 123408-00

41QJ 123411-00

NOTICE OF FILING MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court on the above stamped date. Please read this Report carefully.

If you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations; or if there are errors in the Report, you may file a written objection to the Report within **10 days** from the above stamped date. (Rule 23, Water Right Adjudication Rules.) If you file an objection, you must also mail 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

The city of Great Falls water right claims 41QJ 123408-00 and 41QJ 123411-00 appeared in the Temporary Preliminary Decree for this Basin with a Montana Department of Natural Resources and Conservation (DNRC) issue remark indicating that no volume was claimed.

The issue remark on the abstract of claims 41QJ 123408-00 and 41QJ 123411-00 was not addressed and resolved during the objection process. The Montana Legislature enacted section 85-2-248, MCA, and requires the Water Court to resolve all issue remarks that were not resolved through the objection process.

Under section 85-2-248(2), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issues raised by a remark. In this instance, the information in the claim files was not sufficient to resolve issue remarks, but additional information that addresses and resolves the issue remarks has been obtained by the Court.

FINDINGS OF FACT

1. Claims 41QJ 123408-00 and 41QJ 123411-00 appeared in the Temporary Preliminary Decree for this Basin with a remark noting potential volume issue. Notice of the remark was provided through the Basin Objection List.

2. The record for claims 41QJ 123408-00 and 41QJ 123411-00 is confusing. Claims 41QJ 123408-00 and 41QJ 123411-00 are supplemental with claim 41QJ 123410-00 (not in front of the Court). Claims 41QJ 123408-00, 41QJ 123410-00, and 41QJ 123411-00 share the same point of diversion, storage, and distribution system. According to Amendments filed for claims 41QJ 123408-00 and 41QJ 123411-00 in 2006, the total combined volume shared between all three claims is 20,104.00 acre feet per year. In 2006, the City of Great Falls amended the volume of claims 41QJ 123408-00 and 41QJ 123411-00 to 0.00 acre feet – resulting in the DNRC issue remark indicating that no volume was claimed.

3. On June 22, 2010, the City of Great Falls submitted additional Amendments for claims 41QJ 123408-00 and 41QJ 123411-00. The June 22, 2010 Amendments change the volume for claim 41QJ 123408-00 to 15,105.00 acre feet and the volume for claim 41QJ 123411-00 to 5,035.00 acre feet. On July 30, 2010 an Order Setting Filing Deadline was issued as the total volume for claims 41QJ 123408-00, 41QJ 123410-00 and 41QJ 123411-00 appeared to now be 40,244.00 acre feet – while information in the claim file indicates the total volume for the claims should be 20,140.00 acre feet.

Information provided by the claimant, its consultant, and the DNRC explains that the volumes for claims 41QJ 123408-00, 41QJ 123410-00, and 41QJ 123411-00 are not additive; the total combined appropriation between all three City of Great Falls claims

should be limited to a cumulative volume of 20,140.00 acre feet.

It is appropriate to add the amended volumes to claims 41QJ 123408-00 and 41QJ 123411-00 and an information remark to claims 41QJ 123408-00, 41QJ 123410-00, and 41QJ 123411-00 stating that the combined volumes for all three claims is limited to 20,140 acre feet.

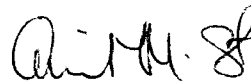
CONCLUSIONS OF LAW

1. The Montana Water Court has exclusive jurisdiction over this matter. Section 3-7-224, MCA.
2. The Basin Objection List has provided basin wide notice of potential changes to these claims. Rules 9 and 27, W.R.Adj.R. Proposed amendments to claim elements that did not appear on the Basin Objection List have no adverse affect on other water users and therefore do not require further notice. Section 85-2 233(6), MCA.
3. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. Any assertion that a claim is incorrect must overcome this prima facie validity by a preponderance of the evidence. Rule 9, W.R.Adj.R. Information resulting in DNRC issue remarks and the issue remarks themselves must be weighed against a claimed water right, and must be resolved as part of the adjudication. Section 85-2-248(2), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Temporary Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claim are served with this Report to confirm the recommended changes have been made in the state's centralized water right record system.

DATED this 5 day of October, 2010.



Anika M. Stern
Water Master

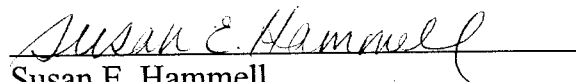
CERTIFICATE OF SERVICE

I, Susan E. Hammell, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above **NOTICE OF FILING MASTER'S REPORT** and **MASTER'S REPORT** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

City of Great Falls
PO Box 5021
Great Falls, MT 59403

Helena DNRC Adjudication Office
Team A
PO Box 201602
Helena, MT 59620-1602

DATED this *5th* day of *October*, 2010.


Susan E. Hammell
Deputy Clerk of Court

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM HOLTER DAM TO SUN RIVER
BASIN 41QJ
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: 41QJ 123408-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GREAT FALLS, CITY OF
PO BOX 5021
GREAT FALLS, MT 59403

Priority Date: JUNE 23, 1971

Type of Historical Right: FILED

Purpose (use): MUNICIPAL

Flow Rate: 60.00 CFS

***Volume:** 15,105.00 AC-FT

THE COMBINED VOLUME FOR CLAIMS 123408-00, 123410-00, AND 123411-00 SHALL NOT EXCEED 20,140 ACRE FEET.

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>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	14	20N	3E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 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				1	20N	3E	CASCADE
2				2	20N	3E	CASCADE
3			NE	3	20N	3E	CASCADE
4			S2	3	20N	3E	CASCADE
5			E2SESE	4	20N	3E	CASCADE
6			S2SE	8	20N	3E	CASCADE
7			NE	9	20N	3E	CASCADE
8			N2NENW	9	20N	3E	CASCADE
9				10	20N	3E	CASCADE
10				11	20N	3E	CASCADE
11				12	20N	3E	CASCADE
12			N2	13	20N	3E	CASCADE

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>
13			SE	13	20N	3E	CASCADE
14			E2NESW	13	20N	3E	CASCADE
15				14	20N	3E	CASCADE
16			E2	15	20N	3E	CASCADE
17			SWNW	15	20N	3E	CASCADE
18				16	20N	3E	CASCADE
19			E2	17	20N	3E	CASCADE
20			E2SW	17	20N	3E	CASCADE
21			SE	19	20N	3E	CASCADE
22				20	20N	3E	CASCADE
23			NWNE	21	20N	3E	CASCADE
24			W2	21	20N	3E	CASCADE
25			N2	22	20N	3E	CASCADE
26			NENENE	23	20N	3E	CASCADE
27				1	20N	4E	CASCADE
28				2	20N	4E	CASCADE
29				3	20N	4E	CASCADE
30			S2	4	20N	4E	CASCADE
31				5	20N	4E	CASCADE
32				6	20N	4E	CASCADE
33				7	20N	4E	CASCADE
34				8	20N	4E	CASCADE
35				9	20N	4E	CASCADE
36				10	20N	4E	CASCADE
37				11	20N	4E	CASCADE
38				12	20N	4E	CASCADE
39			NW	13	20N	4E	CASCADE
40			N2	14	20N	4E	CASCADE
41			NE	15	20N	4E	CASCADE
42			N2N2	16	20N	4E	CASCADE
43			SWNW	16	20N	4E	CASCADE
44			NWSW	16	20N	4E	CASCADE
45			E2	17	20N	4E	CASCADE
46			NW	17	20N	4E	CASCADE
47			NE	18	20N	4E	CASCADE
48			W2	18	20N	4E	CASCADE
49			W2SW	6	20N	5E	CASCADE
50			W2NW	7	20N	5E	CASCADE
51			E2E2SE	34	21N	3E	CASCADE
52			NE	35	21N	3E	CASCADE
53			S2SWNW	35	21N	3E	CASCADE
54			S2	35	21N	3E	CASCADE
55			NWSE	36	21N	3E	CASCADE
56			W2	36	21N	3E	CASCADE
57			S2S2N2	31	21N	4E	CASCADE
58			S2	31	21N	4E	CASCADE
59			S2N2	32	21N	4E	CASCADE
60			S2	32	21N	4E	CASCADE

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.

123408-00 123410-00 123411-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 07/10/2006: FLOW RATE, VOLUME AND PLACE OF USE.

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

THIS APPROPRIATION OF WATER TAKES WATER FROM THE MISSOURI RIVER, FROM HOLTER DAM TO SUN RIVER DRAINAGE (BASIN 41QJ) AND USES IT IN THE MISSOURI RIVER, FROM SUN TO MARIAS RIVERS DRAINAGE (BASIN 41Q) AND THE SUN RIVER DRAINAGE (BASIN 41K). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM HOLTER DAM TO SUN RIVER
BASIN 41QJ
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: 41QJ 123410-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GREAT FALLS, CITY OF
PO BOX 5021
GREAT FALLS, MT 59403

Priority Date: AUGUST 30, 1889

Type of Historical Right: FILED

Purpose (use): MUNICIPAL

Flow Rate: 74.00 CFS

Volume: 20,140.00 AC-FT

THE COMBINED VOLUME FOR CLAIMS 123408-00, 123410-00, AND 123411-00 SHALL NOT EXCEED 20,140 ACRE FEET.

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	14	20N	3E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 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				1	20N	3E	CASCADE
2				2	20N	3E	CASCADE
3			NE	3	20N	3E	CASCADE
4			S2	3	20N	3E	CASCADE
5			E2SESE	4	20N	3E	CASCADE
6			S2SE	8	20N	3E	CASCADE
7			NE	9	20N	3E	CASCADE
8			N2NENW	9	20N	3E	CASCADE
9				10	20N	3E	CASCADE
10				11	20N	3E	CASCADE
11				12	20N	3E	CASCADE
12			N2	13	20N	3E	CASCADE

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>
13			SE	13	20N	3E	CASCADE
14			E2NESW	13	20N	3E	CASCADE
15				14	20N	3E	CASCADE
16			E2	15	20N	3E	CASCADE
17			SWNW	15	20N	3E	CASCADE
18				16	20N	3E	CASCADE
19			E2	17	20N	3E	CASCADE
20			E2SW	17	20N	3E	CASCADE
21			SE	19	20N	3E	CASCADE
22				20	20N	3E	CASCADE
23			NWNE	21	20N	3E	CASCADE
24			W2	21	20N	3E	CASCADE
25			N2	22	20N	3E	CASCADE
26			NENENE	23	20N	3E	CASCADE
27				1	20N	4E	CASCADE
28				2	20N	4E	CASCADE
29				3	20N	4E	CASCADE
30			S2	4	20N	4E	CASCADE
31				5	20N	4E	CASCADE
32				6	20N	4E	CASCADE
33				7	20N	4E	CASCADE
34				8	20N	4E	CASCADE
35				9	20N	4E	CASCADE
36				10	20N	4E	CASCADE
37				11	20N	4E	CASCADE
38				12	20N	4E	CASCADE
39			NW	13	20N	4E	CASCADE
40			N2	14	20N	4E	CASCADE
41			NE	15	20N	4E	CASCADE
42			N2N2	16	20N	4E	CASCADE
43			SWNW	16	20N	4E	CASCADE
44			NWSW	16	20N	4E	CASCADE
45			E2	17	20N	4E	CASCADE
46			NW	17	20N	4E	CASCADE
47			NE	18	20N	4E	CASCADE
48			W2	18	20N	4E	CASCADE
49			W2SW	6	20N	5E	CASCADE
50			W2NW	7	20N	5E	CASCADE
51			E2E2SE	34	21N	3E	CASCADE
52			NE	35	21N	3E	CASCADE
53			S2SWNW	35	21N	3E	CASCADE
54			S2	35	21N	3E	CASCADE
55			NWSE	36	21N	3E	CASCADE
56			W2	36	21N	3E	CASCADE
57			S2S2N2	31	21N	4E	CASCADE
58			S2	31	21N	4E	CASCADE
59			S2N2	32	21N	4E	CASCADE
60			S2	32	21N	4E	CASCADE

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.

123408-00 123410-00 123411-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 07/10/2006: VOLUME AND PLACE OF USE.

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

THIS APPROPRIATION OF WATER TAKES WATER FROM THE MISSOURI RIVER, FROM HOLTER DAM TO SUN RIVER DRAINAGE (BASIN 41QJ) AND USES IT IN THE MISSOURI RIVER, FROM SUN TO MARIAS RIVERS DRAINAGE (BASIN 41Q) AND THE SUN RIVER DRAINAGE (BASIN 41K). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM HOLTER DAM TO SUN RIVER
BASIN 41QJ**

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: 41QJ 123411-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GREAT FALLS, CITY OF
PO BOX 5021
GREAT FALLS, MT 59403

Priority Date: JANUARY 19, 1966

Type of Historical Right: FILED

Purpose (use): MUNICIPAL

Flow Rate: 20.00 CFS

***Volume:** 5,035.00 AC-FT

THE COMBINED VOLUME FOR CLAIMS 123408-00, 123410-00, AND 123411-00 SHALL NOT EXCEED 20,140 ACRE FEET.

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	14	20N	3E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 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				1	20N	3E	CASCADE
2				2	20N	3E	CASCADE
3			NE	3	20N	3E	CASCADE
4			S2	3	20N	3E	CASCADE
5			E2SESE	4	20N	3E	CASCADE
6			S2SE	8	20N	3E	CASCADE
7			NE	9	20N	3E	CASCADE
8			N2NENW	9	20N	3E	CASCADE
9				10	20N	3E	CASCADE
10				11	20N	3E	CASCADE
11				12	20N	3E	CASCADE
12			N2	13	20N	3E	CASCADE

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>
13			SE	13	20N	3E	CASCADE
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16			E2	15	20N	3E	CASCADE
17			SWNW	15	20N	3E	CASCADE
18				16	20N	3E	CASCADE
19			E2	17	20N	3E	CASCADE
20			E2SW	17	20N	3E	CASCADE
21			SE	19	20N	3E	CASCADE
22				20	20N	3E	CASCADE
23			NWNE	21	20N	3E	CASCADE
24			W2	21	20N	3E	CASCADE
25			N2	22	20N	3E	CASCADE
26			NENENE	23	20N	3E	CASCADE
27				1	20N	4E	CASCADE
28				2	20N	4E	CASCADE
29				3	20N	4E	CASCADE
30			S2	4	20N	4E	CASCADE
31				5	20N	4E	CASCADE
32				6	20N	4E	CASCADE
33				7	20N	4E	CASCADE
34				8	20N	4E	CASCADE
35				9	20N	4E	CASCADE
36				10	20N	4E	CASCADE
37				11	20N	4E	CASCADE
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41			NE	15	20N	4E	CASCADE
42			N2N2	16	20N	4E	CASCADE
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45			E2	17	20N	4E	CASCADE
46			NW	17	20N	4E	CASCADE
47			NE	18	20N	4E	CASCADE
48			W2	18	20N	4E	CASCADE
49			W2SW	6	20N	5E	CASCADE
50			W2NW	7	20N	5E	CASCADE
51			E2E2SE	34	21N	3E	CASCADE
52			NE	35	21N	3E	CASCADE
53			S2SWNW	35	21N	3E	CASCADE
54			S2	35	21N	3E	CASCADE
55			NWSE	36	21N	3E	CASCADE
56			W2	36	21N	3E	CASCADE
57			S2S2N2	31	21N	4E	CASCADE
58			S2	31	21N	4E	CASCADE
59			S2N2	32	21N	4E	CASCADE
60			S2	32	21N	4E	CASCADE

Remarks:

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