

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

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

* * * * *

CLAIMANT: ~~Candice Chatfield; Christian C. Chatfield; Teresa
C. Conner~~

CASE 41I-0046-R-2023
41I 30109825

OBJECTOR: City of Townsend

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 may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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

Claim 41I 30109825 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received an objection from the City of Townsend.

FINDINGS OF FACT

1. Claim 41I 30109825 was decreed as a flood irrigation claim from Deep Creek.

2. The City of Townsend objected to the claim, stating:

This water right may be implicated in an exchange of water between Deep Creek and the Broadwater-Missouri Water Users Association. The operation of BMWUA's exchange is unclear. The nature and extent of this right's involvement in the BMWUA's exchange needs to be determined. All substantive DNRC Issue Remarks should be resolved. Objector reserves the right to modify this objection pending further research and/ or the discovery of additional evidence.

3. On January 4, 2024, the Court held a status conference in this matter. James Conner appeared on behalf of Teresa Conner¹. Breeann Johnson appeared on behalf of the City of Townsend. During the status conference, Ms. Johnson and Mr. Conner discussed the objection. Mr. Conner confirmed that claim 41I 30109825 is not involved in the Broadwater-Missouri Water Users Association exchange.

4. Based on the information provided by Mr. Conner, on January 4, 2024, the City of Townsend filed an unconditional withdrawal of their objection to claim 41I 30109825.

5. Claim 41I 30109825 received the following notice-type issue remark:

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.

6. The issue remark states the ditch name was modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remark indicates that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remarks will be removed. Although claim 41I 30109825 received an objection, it has been withdrawn.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

¹ On December 28, 2023, after consolidation of this matter, the DNRC updated ownership of the claim from the Chatfields to Teresa Conner.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. 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. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. The City of Townsend’s objection to claim 41I 30109825 should be dismissed.

2. The notice-type issue remark provided its intended notice.

RECOMMENDATIONS

1. The elements of claim 41I 30109825 should remain as they appeared in the Basin 41I Preliminary Decree.

2. The issue remark should be removed from claim 41I 30109825.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

**Teresa C. Conner
472 Lower Deep Creek Rd
Townsend, MT 59644**

Last Order:

Candice Chatfield
Christian C Chatfield
757 Olguin Rd
Las Vegas, NM 87701

Service via Electronic Mail

Breeann M Johnson
Western Roots Law PLLC
PO Box 7004
Bozeman, MT 59771
(406) 600-9389
johnson@westernrootslaw.com

Note: Caption and Service List Updated 1-8-24

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

Water Right Number: 411 30109825 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: TERESA C CONNER
472 LOWER DEEP CREEK RD
TOWNSEND, MT 59644-9738

Priority Date: APRIL 1, 1870

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 16.41 GPM

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:** 5.34

Source Name: DEEP CREEK

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		NENESW	2	6N	2E	BROADWATER
Period of Diversion: APRIL 1 TO OCTOBER 15						
Diversion Means: HEADGATE						
Ditch Name: HEUER-RIDGEWAY-PROSSER DITCH						
2		NW NESW	2	6N	2E	BROADWATER
Period of Diversion: APRIL 1 TO OCTOBER 15						
Diversion Means: HEADGATE						
Ditch Name: RIDGEWAY DITCH						
3		SENWSW	2	6N	2E	BROADWATER
Period of Diversion: APRIL 1 TO OCTOBER 15						
Diversion Means: HEADGATE						
Ditch Name: RIDGEWAY-PROSSER DITCH						
Period of Use: APRIL 1 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	5.34		SW	2	6N	2E	BROADWATER
Total:	5.34						

THE PLACE OF USE IS PART OF TRACT E-2B OF COS NO. 170504.

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.

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