

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

\*\*\*\*\*

CLAIMANT: Irvin G. Riis

**CASE 41I-2011-R-2023**  
41I 10376-00

**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 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 to 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**

Water right claim 41I 10376-00 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received issue remarks from the Department of Natural Resources and Conservation

(DNRC) raising potential legal or factual issues with the claim. The Water Court consolidated the claim into case 41I-2011-R-2023 to address these issues.

### FINDINGS OF FACT

1. Claim 41I 10376-00 appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

This remark was placed on the claim because the claim identifies the following distinct sources: “SPRING, UNNAMED TRIBUTARY OF ANTELOPE CREEK” and “UNNAMED TRIBUTARY OF ANTELOPE CREEK.”

2. The claim is based on a single notice of appropriation by Thomas Riis for the water of multiple springs in close proximity, diverted into a single ditch.

3. The Water Court requested that the Claimant review the claim and inform the Court if he believed an implied claim should be generated or other action taken to address the remark. The Court informed the Claimant that if nothing was received by the deadline, the Court would conclude that the Claimant agrees the claim is accurate as decreed. Doc. 1.00.<sup>1</sup> The Claimant did not file anything or otherwise contact the Court by the deadline and the Court concludes the Claimant agrees that the claim is accurate as decreed.

### PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

### CONCLUSIONS OF LAW

1. The issue remark fails to overcome the prima facie status of the claim and should be removed from the claim.

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<sup>1</sup> “Doc” refers to the docket number of the document in the Water Court’s Full Court Enterprise case management system.

## RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove the issue remark from the claim.

A Post Decree Abstract of Water Right Claim reflecting the recommended changes is attached to this Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

Irvin G Riis  
6235 US Highway 12  
Winston, MT 59647

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

**Water Right Number:** 411 10376-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** IRVIN G RIIS  
6235 US HIGHWAY 12  
WINSTON, MT 59647-9701

**Priority Date:** DECEMBER 31, 1890

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.27 CFS

THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

**\*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:** 60.00

**Source Name:** UNNAMED TRIBUTARY OF ANTELOPE CREEK

**Source Type:** SURFACE WATER

**Source Name:** SPRING, UNNAMED TRIBUTARY OF ANTELOPE 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         |                 | NWSWSE         | 26         | 9N         | 1W         | BROADWATER    |

**Source Name:** SPRING, UNNAMED TRIBUTARY OF ANTELOPE CREEK

**Period of Diversion:** APRIL 1 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** RIIS DITCH

|   |  |        |    |    |    |            |
|---|--|--------|----|----|----|------------|
| 2 |  | NESWSE | 26 | 9N | 1W | BROADWATER |
|---|--|--------|----|----|----|------------|

**Source Name:** UNNAMED TRIBUTARY OF ANTELOPE CREEK

**Period of Diversion:** APRIL 1 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** RIIS DITCH

**Period of Use:** APRIL 1 TO NOVEMBER 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         | 30.00        |                 | NESE           | 26         | 9N         | 1W         | BROADWATER    |

|               |              |      |    |    |    |            |
|---------------|--------------|------|----|----|----|------------|
| 2             | <u>30.00</u> | NWSE | 26 | 9N | 1W | BROADWATER |
| <b>Total:</b> | 60.00        |      |    |    |    |            |

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**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.

10376-00            10378-00            10379-00