

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**

* * * * *

CLAIMANTS: Masolo Ranch; Polly Robertson; Randall P.
Robertson

CASE 41I-2013-R-2023
41I 2741-00

OBJECTOR: Randall P. Robertson

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 2741-00 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 Randall Robertson and 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-2013-R-2023 to address these issues.

FINDINGS OF FACT

1. Charles Masolo filed Claim 41I 2741-00 on May 1, 1980, as an irrigation claim to Beaver Creek water diverted into the Davies-Dallas Ditch.

2. During DNRC's reexamination in preparation of the Preliminary Decree, DNRC modified the source name from Beaver Creek to Antelope Creek. DNRC placed the following issue remark on the claim, which serves only to provide notice of the change (Notice Only Remark):

SOURCE NAME AND POINT OF DIVERSION WERE 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.

3. DNRC notes in the claim file indicate the source name change was made pursuant to a 1950 USGS topographic map.

4. Claimant Randall Robertson contacted DNRC to discuss this change. A March 16, 2022 DNRC note in the claim file indicates that following a discussion with Mr. Robertson and additional investigation, DNRC determined the source name change was erroneous. Specifically, DNRC found that the 1950 USGS map reflected changes from a historic flood in 1948, but those changes were not lasting and "the Source name for this area of diversions should in fact be Beaver Creek." The source was correctly claimed as Beaver Creek as reflected in the 1956 Water Resources Survey map, 1979 aerials, and current aerials.

5. Mr. Robertson filed an objection seeking to change the source back to Beaver Creek. The Court held a status conference in this matter on December 12, 2023. Carol Masolo called the Court on behalf of Masolo Ranch and represented that she agreed the source of the claim is Beaver Creek. No other parties participated in the status conference.

6. The source of the claim should be corrected to **Beaver Creek**.

7. The Claim also appeared in the Preliminary Decree with the following ownership issue remark:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 12/14/2021 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY JOHN AND CAROL MASOLO.

At the time of filing of this Master's Report, the State's water rights database lists the owners of Claim 41I 2741-00 as Masolo Ranch, Randall Robertson, and Polly Robertson. John and Carol Masolo are included on the service list for this Report as potential owners. If John and Carol Masolo believe a change is necessary to the ownership of this claim, they must contact the DNRC as follows and follow the DNRC's ownership update process:

<p><u>Contact Information</u> Helena Regional Office, DNRC 1424 Ninth Avenue Helena, MT 59620-160 (406) 444-9317</p>
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PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298.

2. 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.

3. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The Source of Claim 41I 2741-00 should be modified to Beaver Creek. This modification resolves Randall Robertson's objection to the claim.

2. The Notice Only Remark and the Ownership remark have served their notice purpose. The issue remarks should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the claim as described above and remove the issue remarks 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

Ranch Masolo
% John Masolo
242 Beaver Creek Rd
Winston, MT 59647

Polly Robertson
Randall P Robertson
269 Beaver Creek Rd
Winston, MT 59647

Potential Owners:

John Masolo
Carol Masolo
242 Beaver Creek Rd
Winston, MT 59647

Note: Service List Updated 1-11-2024

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

Water Right Number: 411 2741-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: POLLY ROBERTSON
269 BEAVER CREEK RD
WINSTON, MT 59647-8302

RANDALL P ROBERTSON
269 BEAVER CREEK RD
WINSTON, MT 59647

MASOLO RANCH
% JOHN MASOLO
242 BEAVER CREEK RD
WINSTON, MT 59647-8302

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: APRIL 15, 1872

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 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: 120.00

***Source Name:** BEAVER 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		SESWNE	30	9N	1E	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: DAVIES-DALLAS DITCH

2		SESWNE	30	9N	1E	BROADWATER
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: DAVIES-DALLAS DITCH

Period of Use: APRIL 15 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	55.00		NE	29	9N	1E	BROADWATER
2	45.00		NW	29	9N	1E	BROADWATER
3	20.00		N2NWSW	29	9N	1E	BROADWATER
Total:	120.00						

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.

2741-00 2749-00 2751-00

APPLICATION TO CHANGE THE POINT OF DIVERSION RECEIVED 08/11/1999. SEE 41I 2741-01.

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION OF A PORTION, 370 GPM UP TO 40 ACRE-FEET, COMPLETED 03/25/1983. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.