

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANTS: Nada Bakos; Harriette Brandon; Henrietta E.
Chiappone; Whisenhunt Grandchildrens Trust

CASE 41S-0647-R-2024
41S 140370-00

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 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

FINDINGS OF FACT

1. The record owners of stock water claim 41S 140370-00 are Nada Bakos, Harriette Brandon, Henrietta E. Chiappone, and the Whisenhunt Grandchildrens Trust (c/o Nada Bakos).

2. Claim 41S 140370-00 was decreed with the point of diversion, reservoir, and place of use located at:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNW	3	18N	17E	FERGUS

3. During examination of the claim, DNRC was unable to locate the claimed reservoir and it placed an issue remark on claim 41S 140370-00 indicating it was unable to locate the reservoir.

4. On March 11, 2022, the Claimants submitted an Amendment requesting to modify the point of diversion, reservoir, and point of diversion legal land description, and means of diversion, as follows:

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	4 SENWNW	NESWNW	3	18N	17E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE DAM

Reservoir: ONSTREAM

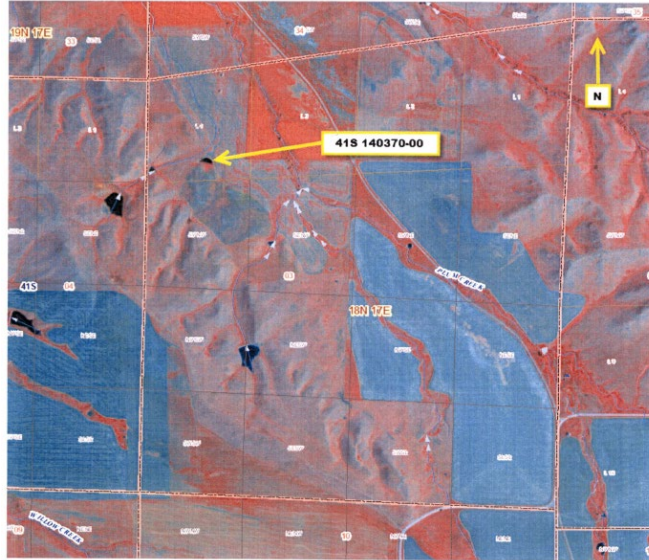
<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
4 SENWNW	NESWNW	3	18N	17E	FERGUS

Diversion to Reservoir: DIVERSION # 1

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		4 SENWNW	NESWNW	3	18N	17E	FERGUS

A map was attached to the Amendment showing the location of the reservoir:



The Amendment and attachments are in the 41S 140370-00 claim file.

5. As the Basin 41S Preliminary Decree would be issued soon, an issue remark was added to claim 41S 140370-00, referencing the Amendment.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The proposed legal land description modifications do not have the potential to adversely affect other water users and therefore do not require further notice as provided for in Section 85-2-233(6), MCA. The modifications do not constitute an expansion of the elements of the claim, and merely correct the paper water right; the use of the water right on the ground has not changed.

RECOMMENDATIONS

1. Claim 40E 167308-00 should be modified as provided in Finding of Fact No. 3.

2. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Nada Bakos
PO Box 441
Langley, WA 98260

Harriette Brandon
2004 Lake Elmo Dr
Billings, MT 59105

Henrietta E. Chiappone
1410 1st St W
Billings, MT 59101

Whisenhunt Grandchildrens Trust
C/O Nada Bakos
PO Box 441
Langley, WA 98260

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 140370-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

NADA BAKOS
PO BOX 441
LANGLEY, WA 98260

HARRIETTE BRANDON
2004 LAKE ELMO DR
BILLINGS, MT 59105

HENRIETTA E CHIAPPONE
1410 1ST ST W
BILLINGS, MT 59101

WHISENHUNT GRANDCHILDRENS TRUST
%NADA BAKOS
PO BOX 441
LANGLEY, WA 98260

Priority Date: JUNE 30, 1960

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF PLUM 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	4	SENWNW	3	18N	17E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
4	SENWNW	3	18N	17E	FERGUS

Diversion to Reservoir: DIVERSION # 1

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		4	SENWNW	3	18N	17E	FERGUS