

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

\*\*\*\*\*

CLAIMANT: Jason W. Birdwell

CASE 41S-0691-R-2024  
41S 19326-00

**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. Jason W. Birdwell is the record owner of domestic claim 41S 19326-00.
2. Claim 41S 19326-00 was decreed with the point of diversion and place of use listed as:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NEESE	36	18N	17E	FERGUS

3. The following DNRC issue remark was decreed on claim 41S 19326-00:  
ON 04/04/2008 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT IT APPEARS THE PLACE OF USE AND POINT OF DIVERSION LEGAL DESCRIPTION SHOULD BE CHANGED TO THE NESENE SEC 36, TWP 18N, RGE 17E, FERGUS CO. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

4. An Order Setting Filing Deadline was issued, explaining that the record supports changing the point of diversion and place of use for claim 41S 19326-00 to reflect the historical use of the claim and to resolve the issue remark:

<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		NESENE	NEESE	36	18N	17E	FERGUS

5. On March 25, 2024, Jason Birdwell filed a Statement agreeing with the proposed point of diversion and place of use modification. The March 25, 2024 Statement noted an error in the March 11, 2024 Order Setting Filing Deadline, specifically with the red mark changes on page 2 of the Order; this Report reflects the correct red marks.

**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.

The record in this Case overcomes the prima facie Statement of Claim as to the point of diversion and place of use legal land description; the point of diversion and place of use legal land description should be modified.

RECOMMENDATIONS

1. The point of diversion and place of use for claim 41S 19326-00 should be modified to:

<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		NESENE	NEESE	36	18N	17E	FERGUS

2. The issue remark 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:**

Jason W. Birdwell  
3383 Upper Spring Creek Rd  
Lewistown, MT 59457-8889  
*(Last Order)*

**Service Via Electronic Mail:**

**Kris A. Birdwell**  
**Birdwell & Aamold, P.C.**  
**Attorney at Law**  
**224 W. Main Street, Suite 511**  
**Lewistown, MT 59457**  
**406-538-2623**

**Caption and Service List Updated: 3/26/2024**

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

**Water Right Number:** 41S 19326-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JASON W BIRDWELL  
3383 UPPER SPRING CREEK RD  
LEWISTOWN, MT 59457-8889

**Priority Date:** SEPTEMBER 19, 1968

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 3.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

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

**Source Type:** GROUNDWATER

**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		NESENE	36	18N	17E	FERGUS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** BUCKET

**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			NESENE	36	18N	17E	FERGUS