

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: Clarence J. Comes; Dean Comes; Kevan
M. Comes

CASE 41S-0774-R-2024
41S 41460-00

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. Clarence J. Comes, Dean Comes, and Kevan M. Comes are the record owners of irrigation claim 41S 41460-00.
2. Claim 41S 41460-00 was decreed with DNRC issue remarks:
 - ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE INCREASE IN MAXIMUM ACRES IRRIGATED.
 - ON 09/31/2006 CLARENCE J. COMES AND MARY LEE COMES FILED A JOINT AFFIDAVIT REQUESTING THAT THE FLOW RATE BE INCREASED TO 2.5 CFS. THIS IS DEEMED AND DOCKETED AS A LATE OBJECTION AND WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

All DNRC issue remarks must be resolved. The first-listed issue remark is a notice-type remark and does not require further attention.

3. The second issue remark points to proceedings during the Temporary Preliminary Decree involving claim 41S 41460-00. A Master's Report was issued on November 2, 2006, and adopted on December 1, 2006, in which the maximum acres and place of use for claim 41S 41460-00 was increased from 57.00 acres to 66.00 irrigated acres. During the Temporary Preliminary Decree proceedings, Clarence J. Comes and Mary Lee Comes filed a notarized joint letter dated September 21, 2006, taken as an Affidavit, that supported increasing the maximum acres, place of use, and flow rate for claim 41S 41460-00:

Prior to July 1 1973 at least 66 acres were irrigated. There were two fields (map A) to make up at least 66 irrigated acres. Map B shows two ditches from the P.O.D. The north ditch was used to irrigate approximately 50 acres of the 57.5 acre field. The south ditch irrigated approximately 20 acres of the 27.4 acre field. A railroad track ran between the two fields. A combination of culverts and ditches were used on the railroad property to irrigate the two fields. In 1948 a screw pump fed a wooden trough which flowed into the earthen ditches.

The original water right (exhibit A) claims 200 miner inches 5cfs of water flowed through a ditch 12 inches by 24 inches from a diversion dam. We are only asking for 2.5 cfs to irrigate the 66 acres because sprinkler irrigation doesn't take as much head as flood.

4. Because flow rate had not been objected to during the Temporary Preliminary Decree, the Affidavit was deemed a late objection, and the issue remark was added to the claim to be addressed during the Preliminary Decree.

PRINCIPLES AND CONCLUSIONS 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. 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.

2. Changing the flow rate for claim 41S 41460-00 to 2.50 cfs for 66.00 acres is within the DNRC flow rate guideline of 17.00 gallons per minute per irrigated acre. Rule 14(b)(1), W.R.C.E.R.

3. The place of use issue remark decreed on claim 41S 41460-00 is a notice-type issue remark. As no objection was filed, no further proceedings are required.

RECOMMENDATIONS

1. The flow rate for claim 41S 41460-00 should be increased to 2.50 cfs.
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:

Clarence J. Comes
2264 East Fork Road
Lewistown, MT 59457

Dean Comes
1137 Fish Hatchery Rd
Lewistown, MT 59457-8890

Kevan M. Comes
2101 E Fork Rd
Lewistown, MT 59457-8806

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

Water Right Number: 41S 41460-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: CLARENCE J COMES
2264 EAST FORK ROAD
LEWISTOWN, MT 59457

DEAN COMES
1137 FISH HATCHERY RD
LEWISTOWN, MT 59457-8890

KEVAN M COMES
2101 E FORK RD
LEWISTOWN, MT 59457-8806

Priority Date: SEPTEMBER 1, 1891

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

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: 4 - MODERATELY LOW

***Maximum Acres:** 66.00

Source Name: BIG SPRING CREEK, EAST FORK

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		SESWSW	27	15N	19E	FERGUS

Period of Diversion: MAY 15 TO SEPTEMBER 30

Diversion Means: PUMP

Period of Use: MAY 15 TO SEPTEMBER 30

***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	20.00		S2SWSW	27	15N	19E	FERGUS
2	32.00		S2SE	28	15N	19E	FERGUS
3	12.00		N2N2NE	33	15N	19E	FERGUS
4	2.00		NWNWNW	34	15N	19E	FERGUS

Total: 66.00