

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

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

* * * * *

CLAIMANTS: Burleigh Family Irrevocable Trust 07/19/12;
Roger Grove; Susan Z. Grove

CASE 41S-0212-R-2024
41S 126186-00
41S 126187-00

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

The above-captioned claims appeared in the Preliminary Decree for the Judith River (Basin 41S) with issue remarks.

The claims were consolidated into Case 41S-0212-R-2024 on February 21, 2024, and the claimants were ordered to work with the Department of Natural Resources and Conservation to resolve the issue remarks on the claims. On June 20, 2024, a Memorandum (“Memo”) was filed (Doc.¹ 2.00).

FINDINGS OF FACT

1. Both claims were decreed with the following issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. The Memo recommends removing the remarks without modifications to the claims. The Memo states that the claimants contacted DNRC and provided information that assisted in resolving the remarks.

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, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.
2. A properly filed Statement of Claim for Existing Water 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.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

3. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, - 231(2), MCA.

CONCLUSION OF LAW

1. The DNRC recommendations should be adopted.

RECOMMENDATION

1. Upon review the record in this case, the issue remarks should be removed from the claims. The claims should otherwise be decreed as they appeared in the Preliminary Decree.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Burleigh Family Irrevocable Trust 07/19/12
Richard F. Burleigh Trustee
23 Madrona Beach Drive
Port Townsend, WA 98368

Roger Grove
Susan Z. Grove
14607 E. Belle Terre Ave.
Veradale, WA 99037-9181

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

Water Right Number: **41S 126186-00 STATEMENT OF CLAIM**

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
ROGER GROVE
14607 E BELLE TERRE AVE
VERADALE, WA 99037-9181

SUSAN Z GROVE
14607 E BELLE TERRE AVE
VERADALE, WA 99037-9181

BURLEIGH FAMILY IRREVOCABLE TRUST 07/19/12
RICHARD F BURLEIGH, TRUSTEE
23 MADRONA BEACH DR
PORT TOWNSEND, WA 98368

Priority Date: JULY 31, 1899

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.79 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: 100.00

Source Name: UNNAMED TRIBUTARY OF BIG SPRING CREEK, EAST FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	11	14N	19E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	DIKE					
2		SESESW	12	14N	19E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	DIKE					
3		NWSENE	12	14N	19E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	DIKE					
4		NWSWNE	12	14N	19E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					

Diversion Means:

DIKE

Period of Use:

APRIL 15 TO OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	25.00		SW	12	14N	19E	FERGUS
2	47.00		E2E2	11	14N	19E	FERGUS
3	6.00		SWNW	12	14N	19E	FERGUS
4	22.00		S2NE	12	14N	19E	FERGUS
Total:	100.00						

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.

126186-00

126187-00

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

Water Right Number: **41S 126187-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
ROGER GROVE
14607 E BELLE TERRE AVE
VERADALE, WA 99037-9181

SUSAN Z GROVE
14607 E BELLE TERRE AVE
VERADALE, WA 99037-9181

BURLEIGH FAMILY IRREVOCABLE TRUST 07/19/12
RICHARD F BURLEIGH, TRUSTEE
23 MADRONA BEACH DR
PORT TOWNSEND, WA 98368

Priority Date: FEBRUARY 20, 1887

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.34 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: 88.00

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		SESWSE	11	14N	19E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

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	65.00		E2E2	11	14N	19E	FERGUS
2	17.00		SESE	2	14N	19E	FERGUS
3	6.00		SWNW	12	14N	19E	FERGUS
Total:	88.00						

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.

126186-00

126187-00