

Montana Water Court
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FILED
08/27/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0400-R-2024
Block, Nathaniel
4.00

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

CLAIMANTS: Joan S. Willson Living Trust; Guy M. Willson
Bypass Trust

CASE 41S-0400-R-2024
41S 13411-00

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

Claim 41S 13411-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) with the following remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 125.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 21.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-94 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

SOURCE NAME AND RESERVOIR RECORD 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.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON UNNAMED TRIBUTARY OF ROSS' FORK CREEK WITH A PRIORITY DATE PREDATES CASE NO 756, FERGUS COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 4.44 TIMES THE CAPACITY OF THE RESERVOIR.

The claim was consolidated into Case 41S-0400-R-2024 on April 19, 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 May 31, 2024, a Memorandum was filed (Doc.¹ 2.00). The Memo states that the claimants did not contact or otherwise assist the DNRC as ordered.

FINDINGS OF FACT

1. The Memo states that reducing the maximum acres to 21 acres² would resolve the 'acres irrigated' issue remarks. A map of the proposed place of use is attached to the Memo.

2. The Memo further states that reducing the volume to 78.78 ac-ft would resolve the 'excessive volume' issue remark.

3. The remaining issue remarks do not require further proceedings to resolve. No objections were filed, and the remarks should be removed as they have served their purpose.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

² There is a discrepancy between the body of the Memo and the proposed abstract, the body states the claim should be reduced to 20 acres while the proposed abstract shows 21 acres. The claimant should object if they believe the 21 acres is not reflective of historical use.

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.

CONCLUSION OF LAW

1. The DNRC recommendations should be adopted.

RECOMMENDATION

1. Upon review the record in this case, claim 41S 13411-00 should be modified as follows:

Volume: ~~140.00 AC-FT~~ 78.78 AC-FT

Maximum Acres: ~~30.00~~ 21.00

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00		SE	SE	5	14N	16E FERGUS
2	17.00 20.00		NW	SE	5	14N	16E FERGUS
3	4.00 5.00		SE	ENW	5	14N	16E FERGUS
Total: 21.00 30.00							

2. Modification of the claim as described in Recommendation #1 resolves the substantive issue remarks on the claim. The remaining issue remarks do not require proceedings to resolve and should be removed from the claim.

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:

Joan S. Willson Living Trust
PO Box 113
Moore, MT 59464-0113

Guy M. Willson Bypass Trust
224 W. Main St. Suite 600
Lewistown, MT 59457-2771

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

Water Right Number: 41S 13411-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WILLSON GUY M BYPASS TRUST
224 W. MAIN ST
SUITE 600
LEWISTOWN, MT 59457-2771

WILLSON, JOAN S LIVING TRUST
PO BOX 113
MOORE, MT 59464-0113

Priority Date: JUNE 13, 1889

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 78.78 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 21.00

***Source Name:** UNNAMED TRIBUTARY OF ROSS FORK 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		NESESE	5	14N	16E	FERGUS

***Period of Diversion:** APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

***Reservoir:** ONSTREAM **Reservoir Name:** WILLSON DAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESESE	5	14N	16E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 16.00 FEET

Depth: 13.00 FEET

Surface Area: 6.06 ACRES

Capacity: 31.51 ACRE-FEET

THE DAM EXTENDS INTO THE NWSWSW , SEC 04 TWP 14N RGE 16E FERGUS COUNTY.

THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

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	17.00		NWSE	5	14N	16E	FERGUS
2	4.00		SESENW	5	14N	16E	FERGUS
Total:	21.00						