

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: B-B LWT LLC

CASE 41S-0666-R-2024

41S 10568-00

41S 10569-00

41S 10570-00

41S 10571-00

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. B-B LWT LLC (B-B LWT) is the record owner of claims 41S 10568-00, 41S 10569-00, 41S 10570-00, and 41S 10571-00.

2. B-B LWT was ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims 41S 10568-00, 41S 10569-00, 41S 10570-00, and 41S 10571-00:

Claim 41S 10568-00

- THE FERGUS COUNTY WATER RESOURCES SURVEY(1970)APPEARS TO INDICATE 22.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-96 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Claim 41S 10569-00:

- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-96 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Claim 41S 10570-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-96 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

Claim 41S 10571-00:

- THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 60.00 GPM PER ACRE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-96 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

3. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum regarding the claims in Case 41S-0666-R-2024. (Doc.* 2.00). Ms. Bluhm indicated she reviewed scanned claim files, Water Resources Surveys, and aerial photographs to prepare the Memorandum. Ms. Bluhm also reported that she spoke with “the claimants” regarding procedure but did not formally meet with B-B LWT to address the issue remarks.

Ms. Bluhm reported that upon review of aerial photograph 278-96 (9/25/1979), she found “clear saturation and field boundaries” at the claimed place of use. Ms. Bluhm found 22.00 irrigated acres and recommended the following change for claim 41S 10568-00:

Maximum Acres:	22.00	30.00						
Place of Use:								
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	22.00	30.00	S2S	18	15N	18E	FERGUS	
Total:	30.00	22.00						

Ms. Bluhm was unable to locate ditches allowing for irrigation from the claimed source for claims 41S 10569-00, 41S 10570-00, and 41S 10571-00. Ms. Bluhm recommended the dismissal of claims 41S 10569-00, 41S 10570-00, and 41S 10571-00.

4. An Order was issued, setting a deadline for B-B LWT to file a statement agreeing or disagreeing that claim 41S 10568-00 should be modified as recommended by Ms. Bluhm:

Maximum Acres:	22.00	30.00						
Place of Use:								
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	22.00	30.00	S2S	18	15N	18E	FERGUS	
Total:	30.00	22.00						

The Order stated that if nothing were filed by the July 15, 2024 deadline, this Water Master would conclude B-B LWT agrees claim 41S 10568-00 should be modified as Ms. Bluhm recommended. The Order also set a July 15, 2024 deadline for B-B LWT to agree

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

or disagree that claims 41S 10569-00, 41S 10570-00, and 41S 10571-00 should be dismissed.

The Order indicated that if nothing were filed by the deadline, this Water Master would conclude B-B LWT agrees the claims should be dismissed. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Section 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. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.
4. In addition to the issue remarks addressed by Ms. Bluhm, claim 41S 10568-00 was decreed with remarks indicating that a period of diversion was added to the claim and modifications were made to the reservoir record and means of diversion. The remarks state that if no objections were filed, the elements will remain as decreed. No objections were filed, and no changes should be made to the elements.

RECOMMENDATIONS

1. Claim 41S 10568-0 should be modified as follows:

Maximum Acres: 22.00 ~~30.00~~

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	22.00 30.00		S2S2NW	18	15N	18E	FERGUS
Total:	22.00 30.00						

2. Claims 41S 10569-00, 41S 10570-00, and 41S 10571-00 should be dismissed.
3. The issue remarks should be removed from claim 41S 10468-00.
Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

B-B LWT LLC
503 E Broadway
Lewistown, MT 59457

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

Water Right Number: 41S 10568-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: B-B LWT LLC
503 E BROADWAY
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1960

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

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

Volume: 45.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 22.00

Source Name: UNNAMED TRIBUTARY OF JUDITH RIVER

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		SESWNW	18	15N	16E	FERGUS

***Period of Diversion:** JUNE 1 TO JULY 1

Diversion Means: DAM

***Reservoir:** ONSTREAM **Reservoir Name:** BOURKE RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWNW	18	15N	16E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 12.00 FEET

Depth: 9.00 FEET

Surface Area: 5.08 ACRES

Capacity: 18.29 ACRE-FEET

Period of Use: JUNE 1 TO JULY 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	22.00		S2S2NW	18	15N	16E	FERGUS

Total: 22.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

10568-00

10572-00

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

Water Right Number: 41S 10569-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: B-B LWT LLC
503 E BROADWAY
LEWISTOWN, MT 59457

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 10570-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: B-B LWT LLC
503 E BROADWAY
LEWISTOWN, MT 59457

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 10571-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: B-B LWT LLC
503 E BROADWAY
LEWISTOWN, MT 59457

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.