

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: Robert L. Behling Trust

CASE 41S-0676-R-2024
41S 101645-00

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. The Robert L. Behling Trust (the Trust) is the record owner of claim 41S 101645-00.

2. Claim 41S 101645-00 was decreed with a DNRC issue remarks:

SOURCE NAME WAS 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 FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

3. The first-listed remark is a notice-type remark and does not require more attention.

4. An authorized representative of the Trust was ordered to meet with a DNRC employee to address the unresolved place of use issue remark decreed on claim 41S 101645-00.

5. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on July 9, 2024. (Doc.¹ 2.00). The Memorandum reported Ms. Bluhm met with “the Claimant” on June 5, 2024 – it was unclear *who* met with Ms. Bluhm. Ms. Bluhm reported she reviewed the abstract, information in the claim file, the Fergus County Water Resources Survey field notes, and an aerial photograph to prepare the Memorandum; a map and proposed abstract were attached to the Memorandum. Ms. Bluhm stated:

This water right was claimed by Jane Steffenhagen on November 30, 1981. This is a subirrigation claim with a total of 74 acres claimed.

During examination, the DNRC found 69 acres of irrigation on the USDA 1979 aerial photo number 278-66 taken 9/25/1979. The DNRC did not locate any irrigation in the Fergus County Water Resources Survey (WRS). During investigations, the DNRC located the WRS aerial photo number MY-3CC-8 taken 9/4/1962, with 60 acres of irrigation present. After discussing with the claimant, there was an agreement that 69 acres is the most accurate representation of the land.

Based on Ms. Bluhm’s recommendation, it appears the following modifications should be made to claim 41S 101645-00, resolving the maximum acres/place of use issue remark:

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

Maximum Acres: 69.00 74.00

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	12.80	45.00	SWSW	2	14N	16E	FERGUS
2	48.10	47.00	NW	11	14N	16E	FERGUS
3	4.60	5.00	NWSE	11	14N	16E	FERGUS
4	0.50	2.00	NENSW	11	14N	16E	FERGUS
5	3.00	5.00	SWNE	11	14N	16E	FERGUS
Total:	74.00	69.00					

6. An Order was issued, setting a deadline for the Trust to agree or disagree with Ms. Bluhm’s recommendations. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Trust agrees with Ms. Bluhm’s recommendations. The Order included the following language:

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 by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The place of use issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

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. The notice-type issue remark decreed on claims 41S 101645-00 has served its purpose. As no objections was filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 41S 101645-00 should be modified as shown in Finding of Fact No. 5.
2. The issue remarks should be removed from claim 41S 101645-00.
An abstract of claim 41S 101645-00 is enclosed for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Robert L. Behling Trust
c/o Trustee
7180 San Antonio Ranch Rd
Washoe Valley, NV 89704-9507

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

Water Right Number: 41S 101645-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BEHLING, ROBERT L TRUST
% TRUSTEE
7180 SAN ANTONIO RANCH RD
WASHOE VALLEY, NV 89704-9507

Priority Date: DECEMBER 31, 1925

Type of Historical Right: USE

Purpose (Use): IRRIGATION

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

Volume: 148.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 69.00

***Source Name:** SUBIRRIGATION, UNNAMED TRIBUTARY OF ROSS FORK CREEK

Source Type: GROUNDWATER
ALSO KNOWN AS ROCK CREEK

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		SWSW	2	14N	16E	FERGUS
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	FLOWING					
2		NW	11	14N	16E	FERGUS
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	FLOWING					
3		NWSE	11	14N	16E	FERGUS
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	FLOWING					
4		NENSW	11	14N	16E	FERGUS
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	FLOWING					
5		SWNE	11	14N	16E	FERGUS
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	FLOWING					

Period of Use: MAY 1 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	12.80		SWSW	2	14N	16E	FERGUS
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Total:	<u>69.00</u>						