

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: Central Montana Foundation

CASE 41S-0757-R-2024

41S 138248-00

41S 138251-00

41S 138257-00

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. Central Montana Foundation is the record owner of claims 41S 138248-00, 41S 138251-00, and 41S 138257-00.

2. Claims 41S 138248-00, 41S 138251-00, and 41S 138257-00 were decreed with DNRC issue remarks:

Claims 41S 138248-00 and 41S 138257-00:

- ON 07/16/2004 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT THE SOURCE SHOULD BE ODENWALD CREEK. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST. BASED ON THE MEMORANDUM, IT APPEARS THIS CLAIM'S SOURCE NAME IS CORRECTLY CODED IN THE CENTRALIZED WATER RIGHT DATABASE.

Claim 41S 138251-00:

- 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.
- RESERVOIR RECORD AND MEANS OF DIVERSION 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.
- A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

All issue remarks must be resolved.

3. The issue remark decreed on claims 41S 138248-00 and 41S 138257-00 resulted from correspondence between a Water Master and a DNRC employee in 2004 regarding points of diversion and source name. An issue remark was placed on the claims to ensure the source could be addressed during Preliminary Decree proceedings.

During reexamination of claims 41S 138248-00 and 41S 138257-00, a DNRC examiner modified the source remark slightly, noting that the source name is already correct in the DNRC database – no changes are needed.

4. The issue remarks decreed on claim 41S 138251-00 provided notice of an opportunity to object to the claim. No objections were filed.

PRINCIPLES 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. The Water Court must address all issue remarks that appear on a claim. Section 85-2-248, MCA.

CONCLUSION OF LAW

1. The issue remarks decreed on claims 41S 138248-00, 41S 138251-00, and 41S 138257-00 are not supported by evidence sufficient to overcome the prima facie status afforded source name.

RECOMMENDATION

1. The issue remarks should be removed from claims 41S 138248-00, 41S 138251-00, and 41S 138257-00 with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Central Montana Foundation
PO Box 334
Lewistown, MT 59457

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

Water Right Number: 41S 138248-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: CENTRAL MONTANA FOUNDATION
PO BOX 334
LEWISTOWN, MT 59457-0334

Priority Date: APRIL 13, 1939

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF ODENWALD CREEK

Source Type: GROUNDWATER

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		NWSENW	14	14N	16E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

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			NWSENW	14	14N	16E	FERGUS

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.

138248-00 138257-00

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

Water Right Number: 41S 138251-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CENTRAL MONTANA FOUNDATION
PO BOX 334
LEWISTOWN, MT 59457-0334

Priority Date: DECEMBER 31, 1905

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

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

***Volume:** 161.30 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED, IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF WOLVERINE 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		NWNWNE	18	15N	18E	FERGUS

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

***Reservoir:** ONSTREAM

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

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Depth: 7.00 FEET

Surface Area: 0.61 ACRES

Capacity: 1.71 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

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			NWNWNE	18	15N	18E	FERGUS

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

Water Right Number: 41S 138257-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: CENTRAL MONTANA FOUNDATION
PO BOX 334
LEWISTOWN, MT 59457-0334

Priority Date: APRIL 13, 1939

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: SPRING, UNNAMED TRIBUTARY OF ODENWALD CREEK

Source Type: GROUNDWATER

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		NWSEW	14	14N	16E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

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	1.00		NWSEW	14	14N	16E	FERGUS

Total: 1.00

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.

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