

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: Bruce & Barbara Bennetts Trust; Alice M.  
Kern; Alta Mae Pallett; David W. Pallett; Donald  
K. Pallett; Doris W. Pallett; Leslie V. Pallett Jr.;  
Phyllis J. Samson

CASE 41S-0011-R-2024

41S 134251-00

41S 134252-00

OBJECTOR: United States of America Bureau of Land  
Management

**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) and received objections from the United States of America (Bureau of Land Management) (“United States”).

The claims were consolidated into Case 41S-0011-R-2024 on February 12, 2024, and a status conference was set. On June 10, 2024, claimants Doris Pallett, David Pallett, Leslie Pallett, Jr, Bruce Bennetts, Barbara Bennetts, Donald Pallett and Alta Mae Pallett filed letters stating that they would be willing to remove those portions of land descriptions claiming federal land (Doc.<sup>1</sup> 5.00) and on June 20, 2024 this Court issued an Order requiring the United States to file documentation stating their position on the claimants proposed modifications to the claims.

On July 17, 2024, the United States filed a Response stating that adding clarifying remarks to the claims would resolve their objections. On July 19, 2024, an Order Setting Show Cause Filing Deadline was issued, requiring the claimants to file documentation stating their position on the modifications described in the US Response. The Order stated that “[i]f nothing is filed it will be viewed as agreement that claims should be modified pursuant to the proposed abstracts attached to the US July 17, 2024, filing”. Nothing was filed in response to the Order.

## FINDINGS OF FACT

1. The following remark should be added to both claims:

**Add land clarification remark: THE POINT OF DIVERSION AND PLACE OF USE DO NOT INCLUDE FEDERAL LAND LOCATED IN GOVERNMENT LOTS 1, 2, 4, IN THE E2NW, AND ALSO THE W2NW SECTION 21, TOWNSHIP 16N, RANGE 19E, FERGUS COUNTY.**

2. The addition of the remarks would resolve the objections to the claims.

## 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.

---

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

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.

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 remark described in Finding of Fact #1 should be placed on the claims. The placement of the remarks on the claims resolves the objections to the claims.

### **RECOMMENDATION**

1. Upon review the record in this case, the claims should be modified as described above. The objections to the claims should be resolved and should be dismissed.

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:**

Bruce & Barbara Bennetts Trust  
% Trustees  
~~3730 Carmel View Road~~  
~~San Diego, CA 92130~~  
**(Return mail received)**

Bruce & Barbara Bennetts Trust  
38180 Del Webb Blvd #15  
Palm Desert, CA 92211

Alice M. Kern  
Phyllis J. Samson  
PO Box 577  
White Sulphur Springs, MT 59645-0577

Alta Mae Pallett  
86 Wildlife Lane  
Lewistown, MT 59457-8014

David W. Pallett  
Doris W. Pallett  
PO Box 503  
Lewistown, MT 59457

David Pallett  
Doris W. Pallett  
~~3001 Ruby Gulch Rd~~  
~~Lewistown MT 59457~~  
**(Return mail received)**

**Service via USPS Mail:**

Donald K. Pallett  
~~PO Box 563~~  
~~Lewiston, ID 83501~~  
**(Return mail received)**

Donald K. Pallett  
512 5<sup>th</sup> St.  
Lewiston, ID 83501-2412

Leslie V. Pallett Jr.  
1055 NE Smith  
Rockaway Beach, OR 97136

**Service via Electronic Mail:**

Jennifer A. Najjar  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 305-0476  
Jennifer.Najjar@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

Alexa Penalosa, Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
Alexa.Penalosa@usdoj.gov  
MontanaBasins.ENRD@usdoj.gov

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

**Water Right Number:** 41S 134251-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

ALICE M KERN  
PO BOX 577  
WHITE SULPHUR SPRINGS, MT 59645-0577

DAVID W PALLETT  
PO BOX 503  
LEWISTOWN, MT 59457

DONALD K PALLETT  
PO BOX 563  
LEWISTON, ID 83501

DORIS W PALLETT  
PO BOX 503  
LEWISTOWN, MT 59457-0503

ERNIE PALLETT  
64 KURNS LN  
LEWISTOWN, MT 59457-8809

LESLIE V PALLETT JR  
3111 NORTH 150 DRIVER  
GOODYEAR, AZ 85395

MICHAEL H PALLETT  
64 KURNS LN  
LEWISTOWN, MT 59457-8809

SHERRI PALLETT  
64 KURNS LN  
LEWISTOWN, MT 59457-8809

PHYLLIS J SAMSON  
% PO BOX 577  
WHITE SULPHUR SPRINGS, MT 59645-0577

BENNETTS, BRUCE & BARBARA TRUST  
%TRUSTEES  
3730 CARMEL VIEW ROAD  
SAN DIEGO, CA 92130

**Priority Date:** JULY 1, 1938

**Type of Historical Right:** FILED

**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:** RUBY GULCH

**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		E2	21	16N	19E	FERGUS

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NW	21	16N	19E	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			E2	21	16N	19E	FERGUS
2			NW	21	16N	19E	FERGUS

THE POINT OF DIVERSION AND PLACE OF USE DO NOT INCLUDE FEDERAL LAND LOCATED IN GOVERNMENT LOTS 1, 2, 4, IN THE E2NW, AND ALSO THE W2NW SECTION 21, TOWNSHIP 16N, RANGE 19E, FERGUS COUNTY

**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.

134251-00      134252-00

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

**Water Right Number:** 41S 134252-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

ALICE M KERN  
PO BOX 577  
WHITE SULPHUR SPRINGS, MT 59645-0577

DAVID W PALLETT  
PO BOX 503  
LEWISTOWN, MT 59457

DONALD K PALLETT  
PO BOX 563  
LEWISTON, ID 83501

DORIS W PALLETT  
PO BOX 503  
LEWISTOWN, MT 59457-0503

ERNIE PALLETT  
64 KURNS LN  
LEWISTOWN, MT 59457-8809

LESLIE V PALLETT JR  
3111 NORTH 150 DRIVER  
GOODYEAR, AZ 85395

MICHAEL H PALLETT  
64 KURNS LN  
LEWISTOWN, MT 59457-8809

SHERRI PALLETT  
64 KURNS LN  
LEWISTOWN, MT 59457-8809

PHYLLIS J SAMSON  
% PO BOX 577  
WHITE SULPHUR SPRINGS, MT 59645-0577

BENNETTS, BRUCE & BARBARA TRUST  
%TRUSTEES  
3730 CARMEL VIEW ROAD  
SAN DIEGO, CA 92130

**Priority Date:** JULY 1, 1938

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 25.00 GPM  
**Volume:** 6.80 AC-FT  
**Households:** 7  
**Source Name:** RUBY GULCH  
**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		E2	21	16N	19E	FERGUS

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

**Diversion Means:** INSTREAM

2		NW	21	16N	19E	FERGUS
---	--	----	----	-----	-----	--------

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

**Diversion Means:** INSTREAM

**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			E2	21	16N	19E	FERGUS
2			NW	21	16N	19E	FERGUS

THE POINT OF DIVERSION AND PLACE OF USE DO NOT INCLUDE FEDERAL LAND LOCATED IN GOVERNMENT LOTS 1, 2, 4, IN THE E2NW, AND ALSO THE W2NW SECTION 21, TOWNSHIP 16N, RANGE 19E, FERGUS COUNTY

**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.

134251-00      134252-00