

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

CLAIMANTS: Edward A. Wichman; Janelle D. Wichman

CASE 41S-0370-R-2024
41S 101997-00

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

The above-captioned claim appeared in the Preliminary Decree for the Judith River (Basin 41S) and was decreed with issue remarks as a result of Department of Natural Resources and Conservation (“DNRC”) examination. The claim was

consolidated into Case 41S-0370-R-2024 on June 18, 2024, and on July 26, 2024 the DNRC filed a Memorandum making recommendations to resolve the issue remarks on the claim (Doc.¹ 2.00).

FINDINGS OF FACT

1. Claim 41S 101997-00 was decreed with the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-66 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON ROCK CREEK WITH A PRIORITY DATE PREDATING 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 PRIORITY DATE IS IN QUESTION. IT APPEARS THAT THE CORRECT PRIORITY DATE FOR THE 400 MI RIGHT OUT OF ROCK CREEK IS 04/02/1921.

2. The Memo recommends removing the maximum acres remark, the flow rate remark, and the priority date remark without modification of the claim. The DNRC recommends modifying the point of diversion as follows and states that modification of the point of diversion resolves the point of diversion issue remark:

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	SWNESE	SENESE	34	15N	16E	FERGUS

3. The Memo states that the DNRC water resource specialist spoke with the claimant over the phone. If the claimants disagree with the point of diversion modification they should file an objection to this Master’s Report.

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

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

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 DNRC recommendations for the claim should be adopted.
2. Adoption of the recommendations resolves the issue remarks on the claim and the issue remarks should be removed.

RECOMMENDATION

1. Upon review the record in this case, the claim should be modified as discussed above. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Edward A. Wichman
Janelle D. Wichman
104 12th Ave. S.
Lewistown, MT 59457

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

Water Right Number: 41S 101997-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: EDWARD A WICHMAN
104 12TH AVE S
LEWISTOWN, MT 59457

JANELLE D WICHMAN
104 12TH AVE S
LEWISTOWN, MT 59457

Priority Date: JULY 29, 1899

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 426.38 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 25.00

Source Name: ROCK 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		SWNESE	34	15N	16E	FERGUS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: APRIL 1 TO OCTOBER 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	25.00		NESE	34	15N	16E	FERGUS

Total: 25.00