

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: Suzanne R. Aune; Chris F. Aune; Thomas
M. Swanz; Carol A. Swanz

CASE 41S-0636-R-2024
41S 101588-00

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. Claim 41S 101588-00 was decreed with DNRC issue remarks:
 - THE CLAIMED FLOW RATE IS 24.00 GPM PER ACRE. THE CLAIMED FLOW RATE CANNOT BE CONFIRMED.
 - FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
 - THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
 - USDA AERIAL PHOTOGRAPH NO(S). 30045-179-78 AND 30045-179-80 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

2. Claimants Chris F. Aune, Suzanne R. Aune, Carol A. Swanz, Thomas M. Swanz were ordered to meet with the DNRC to address the issue remarks decreed on claim 41S 101588-00.

3. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating she discussed the issue remarks with “the claimant” on May 6, 2024. (Doc.1 2.00). It is unclear which of the four Claimants Ms. Bluhm spoke with. Ms. Bluhm reported that she reviewed the claim abstract, scanned claim file, aerial photographs, and the Judith Basin County Water Resources Survey to prepare the Memorandum. Ms. Bluhm indicated that she was unable to confirm any irrigation from the claimed ditch and she recommended dismissal of claim 41S 101588-00.

4. A deadline was set for Claimants Chris F. Aune, Suzanne R. Aune, Carol A. Swanz, and Thomas M. Swanz to agree or disagree that claim 41S 101588-00 should be dismissed. The Order Setting Filing Deadline indicated that if nothing were filed by the deadline, this Water Master would conclude that Chris F. Aune, Suzanne R. Aune, Carol A. Swanz, and Thomas M. Swanz agree claim 41S 101588-00 should be dismissed. 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.

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

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were 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.

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. Under 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.

RECOMMENDATION

1. Claim 41S 101588-00 should be dismissed.

An abstract is enclosed for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Suzanne R. Aune
Chris F. Aune
2434 Antelope Creek Rd
Hobson, MT 59452

Thomas M. Swanz
Carol A. Swanz
1555 Antelope Creek Rd
Hobson, MT 59452

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

Water Right Number: 41S 101588-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: CAROL A SWANZ
1555 ANTELOPE CREEK RD
HOBSON, MT 59452

THOMAS M SWANZ
1555 ANTELOPE CREEK RD
HOBSON, MT 59452

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.