

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: Joshua D. Barta; Catherine M. Barta;
Rodney D. Harmon; Jane E. Harmon

CASE 41S-0658-R-2024
41S 19333-00

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. Jane E. Harmon and Rodney D. Harmon (the Claimants) are the record co-owners of claim 41S 19333-00; Catherine M. Barta and Joshua D. Barta are contract for deed purchasers of the property appurtenant to claim 41S 19333-00.*

2. The Claimants were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claim 41S 19333-00:

- 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). 30027-178-53 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum regarding his review of the issue remarks, a map was attached to the Memorandum. (Doc. † 2.00). Mr. Ahlgren reported he reviewed scanned files, the Fergus County Water Resources Survey, and an aerial photograph, and discussed the claim with Josh Barta to prepare the Memorandum. Based on the available information, Mr. Ahlgren made the following recommendations for the disposition of the issue remarks decreed on claim 41S 19333-00:

Flow Rate: 346.80 GPM 1.74 CFS

Maximum Acres: 20.40 46.00

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	20.40 26.00		SWSE	1	14N	17E	FERGUS
2	10.00		W2SESE	4	14N	17E	FERGUS
Total:	<u>46.00</u> 20.40						

4. A deadline was set for the Claimants to file statements agreeing or disagreeing that claim 41S 19333-00 should be modified as described in Finding of Fact No. 3.

* If the contract for deed has been satisfied, the parties may contact the DNRC to update ownership.

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

The Order indicated that if nothing were filed by the July 15, 2024 deadline, this Water Master would conclude Claimants Catherine M. Barta, Joshua D. Barta, Jane E. Harmon, Rodney D. Harmon agree with the recommended changes and a Master's Report will be issued. 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 Water Court must address all issue remarks decreed on a claim. 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. 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. Claim 41S 19333-00 was decreed with a notice-type issue remark indicating that the priority date may be questionable and if no objections were filed, the priority date would remain as decreed. No objections were filed, and no changes should be made to the priority date.

RECOMMENDATIONS

1. Claim 41S 19333-00 should be modified as shown in Finding of Fact No. 3.

2. The issue remarks should be removed from claim 41S 19333-00.
An abstract is enclosed for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Joshua D. Barta
Catherine M. Barta
4133 Cottonwood Creek Rd
Lewistown, MT 59457

Rodney D. Harmon
Jane E. Harmon
14294 Cottonwood Creek Rd
Lewistown, MT 59457-7696

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

Water Right Number: 41S 19333-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JANE E HARMON
14294 COTTONWOOD CREEK RD
LEWISTOWN, MT 59457-7696

RODNEY D HARMON
14294 COTTONWOOD CREEK RD
LEWISTOWN, MT 59457-7696

Priority Date: MARCH 20, 1882

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 346.80 GPM

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 20.40

Source Name: COTTONWOOD 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		NENENW	12	14N	17E	FERGUS

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

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	20.40		SWSE	1	14N	17E	FERGUS

Total: 20.40

Contract for Deed Purchasers: CATHERINE M BARTA
4133 COTTONWOOD CREEK RD
LEWISTOWN, MT 59457

JOSHUA D BARTA
4133 COTTONWOOD CREEK RD
LEWISTOWN, MT 59457

THIS WATER RIGHT IS APPURTENANT TO REAL PROPERTY THAT IS THE SUBJECT OF A CONTRACT FOR DEED. THE CONTRACT FOR DEED PURCHASER IS ENTITLED TO THE SAME NOTICE AS THE OWNER OF THE PROPERTY PURSUANT TO 85-2-232(1)(C) AND 70-20-115, MCA. REFERENCE TO THE CONTRACT FOR DEED PURCHASERS IN THIS ABSTRACT IS FOR NOTICE PURPOSES ONLY AND DOES NOT AMOUNT TO A STATEMENT REGARDING OWNERSHIP. UPON TRANSFER OF THE PROPERTY IDENTIFIED AS THE PLACE OF USE FOR THIS WATER RIGHT, THE TRANSFEREE IS RESPONSIBLE FOR UPDATING OWNERSHIP AS REQUIRED BY 85-2-423 AND -424, MCA. IN THE EVENT OF A DEFAULT RESULTING IN TERMINATION OF THE CONTRACT FOR DEED AND RELEASE OF DOCUMENTS FROM ESCROW, THE OWNERS SHALL PROVIDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH A COPY OF A QUIT CLAIM DEED OR SIMILAR INSTRUMENT INDICATING THE CONTRACT FOR DEED PURCHASERS ARE NO LONGER ENTITLED TO RECEIVE NOTICE OF PROCEEDINGS INVOLVING THIS WATER RIGHT.