

Montana Water Court
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FILED
11/27/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0732-R-2024
Stern, Anika
8.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANTS: Chester Brown; David Brown; Roger L. Brown

CASE 41S-0732-R-2024

41S 126808-00

LATE OBJECTOR: David Brown

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. Chester Brown, David Brown, and Roger L. Brown (the Browns) are the record owners of claim 41S 126808-00.

2. Claim 41S 126808-00 was decreed with DNRC issue remarks:

- ON 01/18/2001 DAVID BROWN FILED AN AFFIDAVIT SPECIFYING INCREASES IN THE MAXIMUM ACRES IRRIGATED, PLACE OF USE, AND FLOW RATE. THIS WAS DEEMED AND DOCKETED AS A LATE OBJECTION AND WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.
- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-212 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

3. The first-listed issue remark refers to a January 18, 2001 letter filed by David Brown:

SUBJECT: CLAIM NO 41SW126808-00

DEAR MR. COLE

I AM ADDRESSING THIS LETTER IN RESPONSE TO YOURS OF OCT 17, 2001. I HAVE OBTAINED A FORM AND MAP FROM MR. DUBOISE TO SHOW ACTUAL ACRES WATERED NOW AND BEFORE 1973.

I AM IN DISPUTE OVER NEW WATER FLOW OF .45CFPS AS IT IS NOT ADEQUATE AS IT IS ONLY 10% OF THE ORIGINAL WATER FLOW CLAIM OF 200 MINERAL INCHES.

RESPECTFULLY,
David Brown

The Temporary Preliminary Decree objection deadline for Basin 41S was in 1984. David Brown's letter was taken as an objection. Because the objection was almost two decades overdue, an issue remark was added to claim 41S 126808-00 to ensure the late objection could be addressed during the Preliminary Decree in Basin 41S.

4. A deadline was set for David Brown to indicate whether he intended to pursue the late Objection to claim 41S 126808-00. The Order indicated that if nothing were filed by August 26, 2024, dismissal of the late Objection would be recommended in the forthcoming Master's Report. The following language was included in the Order:

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.

5. The Browns were ordered to meet with the DNRC to address the place of use and flow rate issue remarks decreed on claim 41S 126808-00.

3. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum on September 6, 2024. (Doc.¹ 3.00). Mr. Ahlgren reported he reviewed the scanned claim file, the Fergus County Water Resources Survey, and an aerial photo to prepare the Memorandum. A map and proposed abstract were attached to the Memorandum along with a statement made by Clarence Comes. The Memorandum reports Mr. Ahlgren met with Roger Brown on August 7, 2024, but it does not indicate whether the Claimants agreed or disagreed with the recommendation. Mr. Ahlgren recommended claim 41S 126808-00 be modified as follows:

Flow Rate:	51.00	204.08-GPM					
Maximum Acres:	3.00	12.00					
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	3.00	12.00	S2SW	27	15N	19E	FERGUS
Total:	12.00	3.00					

A deadline was set for the Browns to agree or disagree with the proposed modifications. The Order indicated that if nothing were filed by the deadline, a Master’s Report would be issued recommending the proposed modifications be made. On November 25, 2024, Jane Kristine Brown, the personal representative of David Brown, indicated agreement with Mr. Ahlgren’s recommendations, through her counsel. (Doc. 7.00). Nothing else was filed.

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. 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 decreed on a claim. Section 85-2-248, MCA.

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.

David Brown failed to comply with the July 22, 2024 Order Setting Filing Deadline and the late Objection January 18, 2001 late Objection should be dismissed.

RECOMMENDATIONS

1. David Brown’s January 18, 2001 late Objection to claim 41S 126808-00 should be dismissed.

2. The following modifications should be made to claim 41S 126808-00:

Flow Rate:	51.00	201.08-GPM					
Maximum Acres:	3.00	42.00					
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	3.00	42.00	S2SW	27	15N	19E	FERGUS
Total:	42.00	3.00					

3. The issue remarks should be removed from claim 41S 126808-00. An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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Roger L. Brown
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Billings, MT 59105

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

Water Right Number: 41S 126808-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: CHESTER BROWN
% PO BOX 130
LAVINA, MT 59046

DAVID BROWN
PO BOX 130
LAVINA, MT 59046

ROGER L BROWN
1821 SATORIE RD
BILLINGS, MT 59105

Priority Date: DECEMBER 31, 1891

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 51.00 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: 3.00

Source Name: BIG SPRING CREEK, EAST FORK

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		NESWNE	34	15N	19E	FERGUS

Period of Diversion: MAY 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 1

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	3.00		S2SW	27	15N	19E	FERGUS

Total: 3.00