

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

CLAIMANT: East Fork Holdings LLC

CASE 41S-0827-R-2024

41S 119055-00

41S 119056-00

41S 119057-00

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. East Fork Holdings (Claimant) is the record owner of claims 41S 119055-00, 41S 119056-00, and 41S 119057-00.

2. Claims 41S 119055-00, 41S 119056-00, and 41S 119057-00 were decreed with DNRC issue remarks:

Claims 41S 119055-00 and 41S 119056-00:

- 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). 30027-278-206 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Claim 41S 119057-00:

- 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). 30027-278-206 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

3. The Claimant was ordered to meet with a DNRC employee to address the unresolved issue remarks.

4. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating the Claimant did not contact the DNRC. (Doc.¹ 2.00). Mr. Ahlgren indicated he reviewed scanned claim files and the Fergus County Water Resource Survey to prepare the Memorandum. Mr. Ahlgren indicated that nobody contacted him on behalf of East Fork. For each claim, Mr. Ahlgren stated he was unable to substantiate historical irrigation, and he recommended the claims be dismissed.

5. A deadline was set to determine if the Claimant agreed with the Recommendation to dismiss the claims. (Doc. 3.00).

6. On November 14, 2024, Claimant East Fork Holdings, LLC filed Claimant's Response to Recommendation for Dismissal of Claims, along with the Affidavit of consultant Scott Irvin, and exhibits which included marked aerial photos, a photograph of an outlet pipe, and a proposed abstract for claim 41S 119057-00. (Docs. 9 to 16.00).

The November 14, 2024 Filing states the Claimant does not contest the DNRC's recommendation regarding dismissal of claims 41S 119055-00 and 41S 119056-00.

The November 14, 2024 Filing explains Claimant East Fork Holdings, LLC contests the dismissal of claim 41S 119057-00. East Fork Holdings, LLC provided a 1968

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

aerial photograph (aerial photo No. 3-123 GS-VBYX, July 6, 1968, Exhibits 3 and 4), predating both place of use issue remarks, suggesting irrigation at the claimed place of use and point of diversion. The 1976 aerial photograph (aerial photo No. MMAP 8-32-56, May 27, 1976, Exhibit 5), predating one of the place of use issue remarks, shows obvious irrigation. East Fork Holdings, LLC proposed the place of use legal land description be consolidated:

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	4.40	3-00	NWNWNE	27	13N	19E	FERGUS
2	19.60	11-00	W2SWSE	22	13N	19E	FERGUS
3	5.00		NESWSE	22	13N	19E	FERGUS
4	5.00		SENWSE	22	13N	19E	FERGUS
Total:	24.00						

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.

RECOMMENDATIONS

1. Claims 41S 119055-00 and 41S 119056-00 should be dismissed.
2. Claim 41S 119057-00 should be modified as follows:

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	4.40	3-00	NWNWNE	27	13N	19E	FERGUS
2	19.60	11-00	W2SWSE	22	13N	19E	FERGUS
3	5.00		NESWSE	22	13N	19E	FERGUS
4	5.00		SENWSE	22	13N	19E	FERGUS
Total:	24.00						

The issue remarks should be removed from claim 41S 119057-00.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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

Water Right Number: 41S 119055-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: EAST FORK HOLDINGS LLC
109 ROYAL PALM WAY
PALM BEACH, FL 33480-4249

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: MIDDLE FORK

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.

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

Water Right Number: 41S 119056-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: EAST FORK HOLDINGS LLC
109 ROYAL PALM WAY
PALM BEACH, FL 33480-4249

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF BIG SPRING CREEK, EAST FORK

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.

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

Water Right Number: 41S 119057-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: EAST FORK HOLDINGS LLC
109 ROYAL PALM WAY
PALM BEACH, FL 33480-4249

Priority Date: JUNE 15, 1964

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 408.00 GPM

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

Climatic Area: 5 - LOW

Maximum Acres: 24.00

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		NWNWNE	27	13N	19E	FERGUS

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: APRIL 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	4.40		NWNWNE	27	13N	19E	FERGUS
2	19.60		SWSE	22	13N	19E	FERGUS

Total: 24.00