

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: Brett M. Hersel; Roberta Y. Hersel

CASE 41S-1002-R-2024  
41S 30112037

**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. Brett M. Hersel and Roberta Y. Hersel (the Hersels) are the record owners of claim 41S 30112037.

2. Claim 41S 30112037 was decreed with DNRC issue remarks:

- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF 3.375 ACRE-FEET.

Section 85-2-248, MCA requires all issue remarks be resolved.

3. The first issue remark decreed on claim 41S 30112037 is a notice-type remark and does not require further attention.

4. Claim 41S 30112037 was decreed with a 3.40 acre-foot volume. The general volume guideline for domestic claims is 1.50 acre-feet per household and 2.5 acre-feet per acre of lawn and garden irrigation. Claim 41S 30112037 describes one household and .75 acres of irrigation ((1 house x 1.50) + (.75 x 2.50) = 3.375 acre feet = 3.38 acre feet).

4. An Order was issued setting a deadline for the Hersels to agree or disagree that the volume for claim 41S 30112037 be reduced from 3.40 acre feet to 3.38 acre-feet. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Brett M. Hersel and Roberta Y. Hersel agree with the proposed volume reduction and a Master’s Report would 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 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. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

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. Rule 19(b)(2), W.R.C.E.R. sets guideline volumes for domestic claims. A 3.40 acre-feet volume is consistent with the volume guideline for claim 41S 30112037.

4. 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.

5. The notice-type issue remark decreed on claims 41S 30112037 has served its purpose. As no objections were filed, no further proceedings are required.

#### RECOMMENDATIONS

1. The volume for claim 41S 30112037 should be reduced from 3.40 acre-feet to 3.38 acre-feet.

2. The issue remarks should be removed from claim 41S 30112037.

An abstract is attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Brett M. Hersel  
Roberta Y. Hersel  
PO Box 31  
Lewistown, MT 59457

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

**Water Right Number:** 41S 30112037 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRETT M HERSEL  
PO BOX 31  
LEWISTOWN, MT 59457-0031

ROBERTA Y HERSEL  
PO BOX 31  
LEWISTOWN, MT 59457-0031

**\*Priority Date:** DECEMBER 31, 1952

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 13.00 GPM

**Volume:** 3.38 AC-FT

**Households:** 1

**Maximum Acres:** 0.75

**\*Source Name:** SPRING, UNNAMED TRIBUTARY OF BIG SPRING CREEK

**Source Type:** GROUNDWATER

**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         |                 | SWSENW         | 26         | 15N        | 18E        | FERGUS        |

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DEVELOPED SPRING

**Period of Use:** JANUARY 1 TO DECEMBER 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         | 0.75         |                 | SWSENW         | 26         | 15N        | 18E        | FERGUS        |

**Total:** 0.75

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30112037      30112038