

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: McMillan Trust

OBJECTOR: McMillan Trust

**CASE 41S-0067-R-2024**

- 41S 48770-00
- 41S 48771-00
- 41S 115273-00
- 41S 115275-00
- 41S 115276-00
- 41S 115277-00
- 41S 115278-00
- 41S 115281-00
- 41S 115283-00
- 41S 139535-00
- 41S 139537-00
- 41S 139538-00

**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

The above-captioned claims appeared in the Preliminary Decree for the Judith River (Basin 41S) and received issue remarks placed on the claims during reexamination of the claims by the Department of Natural Resources and Conservation (“DNRC”) as well as objections from claimant McMillan Trust.

On February 12, 2024, the claims were consolidated into case 41S-0067-R-2024 (Doc.<sup>1</sup> 1.00). On April 26, 2024, the McMillan Trust (“Trust”) filed a Status Report detailing the Trust’s proposed resolution to their objections (Doc. 2.00). Attached to the Status Report was an affidavit of Scott Irvin. On July 1, 2024, the Trust filed additional information regarding claim 41S 139535-00 (Doc. 4.00).

## FINDINGS OF FACT

1. Pursuant to the status report, the Trust proposes adding the following points of diversion and places of use to claim 41S 48770-00:

ID	Qtr	Sec	Sec	Twp	Rge
2	W2NW		26	15N	17E
3	NESW		26	15N	17E
4	SWNWSE		26	15N	17E

2. The affidavit states that “[a]ccording to Dean McMillan” stock historically accessed Cottonwood Creek at these locations.

3. Claim 41S 48771-00 was decreed with the following issue remarks:

THE CLAIMED MEANS OF DIVERSION MAY BE INCORRECT AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 22.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-16 , DATED 09/25/1979 , APPEARS TO INDICATE 13.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

4. The status report states that while the means of diversion is correct, the legal description is not. The report states that the POD is in the S2SWNW S26 T15N R17E and includes a 1968 aerial photograph showing the location of the POD. The affidavit

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

attached to the report states that the POU should be reduced to 22 acres and provides supportive analysis for the reduction.

5. Pursuant to the status report, the Trust proposes modifying the source for claim 41S 115273-00 to ‘groundwater’ (Spring, Unnamed Tributary of Middle Fork Big Spring Creek) and the means to diversion to ‘developed spring’ and the flow rate to 20 GPM. The affidavit states that the spring is a developed, manmade spring.

6. Claim 41S 115275-00 was decreed with the following substantive issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE GOVT LOT 2 IN THE SWNWSE SEC 29 TWP 13N RGE 19E FERGUS CO.

7. The Trust proposes modifying claim 41S 115275-00 as follows<sup>2</sup>:

\*Flow Rate: **3 GPM** ~~A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.~~

Source Name: ~~UNNAMED TRIBUTARY OF MIDDLE FORK~~ **SPRING (PIT), UNNAMED TRIBUTARY OF BIG SPRING CREEK, MIDDLE FORK**  
 Source Type: ~~SURFACE WATER~~ **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	2	SWNWSE	29	13N	19E	FERGUS

\*Period of Diversion: ~~JUNE 1 TO OCTOBER 15~~ **JANUARY 1 TO DECEMBER 31**

Diversion Means: ~~DAM~~ **DAM/PIT**

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	<b>Gov Lot 2</b>	<del>SWNWSE</del>	<del>NWNWSE</del>	29	13N	19E	FERGUS

8. The Trust proposes modifying claim 41S 115276-00 as follows:

\*Period of Diversion: ~~JUNE 1 TO OCTOBER 15~~ **JANUARY 1 TO DECEMBER 31**

Diversion Means: ~~LIVESTOCK DIRECT FROM SOURCE~~ **DAM**

9. The Trust proposes modifying claim 41S 115277-00 as follows:

\*Source Name: ~~SPRING, UNNAMED TRIBUTARY OF MIDDLE FORK~~ **SPRING, UNNAMED TRIBUTARY BIG SPRING CREEK, EAST FORK**  
 Source Type: ~~GROUNDWATER~~

10. Claim 41S 115278-00 was decreed with the following substantive issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEAR TO BE NWNWNW SEC 20, T13N, R19E, FERGUS COUNTY.

<sup>2</sup> The Status Report proposes quantifying the flow rate at 3 GPM, the proposed abstract includes no modification to the flow rate. Additional discrepancies exist between the text of the Status Report, the Affidavit, and the Proposed Abstract. Claimant should file an objection if they believe the modification to the flow rate was made in error.

11. The Trust proposes modifying claim 41S 115278-00 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		NWNWNW	<del>NENENE</del>	<del>20</del>	19	13N	19E FERGUS

12. The Trust proposes modifying claim 41S 115281-00 as follows:

**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	SEWNWE	<del>NWSWNE</del>	19	13N	19E	FERGUS

**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		SEWNWE	<del>NWSWNE</del>	19	13N	19E	FERGUS

13. The Trust proposes modifying claim 41S 115283-00 as follows:

**Priority Date:**                    DECEMBER 31, ~~1884~~ 1882

14. An affidavit attached to the Statement of Claim states that “George Williams filed on land in 1882 and watered his livestock at this location”.

15. Claim 41S 139535-00 was decreed with the following substantive issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-16 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 05/10/1886.

16. The Trust’s July 1, 2024 filing includes an affidavit and review of 1972 imagery which Scott Irvin states shows 19 acres of irrigation. The filing also states that the flow rate should be corrected to 500 GPM as originally claimed. The filing states that 500 GPM is the capacity of the pump. Finally, the Trust agrees with the priority date issue remark in that the priority date of the claim should be May 10, 1886.

17. Scott Irvin’s Affidavit states that in essence, claims 41S 139537-00 and 41S 139538-00 inadvertently claimed each other’s domestic right. In order to correct the error, the Trust objected to the claims.

18. The Affidavit further states that the following modifications should be made to claim 41S 139537-00 to properly reflect historical use:

**Priority Date:** ~~MAY 31, 1952~~ **DECEMBER 31, 1928**

**Volume:** ~~1.50 AC FT~~ **6.50 AC-FT**

**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	<del>NWNENW</del> <b>SWNENW</b>	<del>NWNENW</del>	28	15N	17E	FERGUS

**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	2.00	<del>NWNENW</del> <b>SWNENW</b>	<del>NWNENW</del>	28	15N	17E	FERGUS
<b>Total:</b>	2.00						

19. The Affidavit further states that the following modifications should be made to claim 41S 139538-00 to properly reflect historical use:

**Priority Date:** ~~DECEMBER 31, 1928~~ **MAY 31, 1952**

**Volume:** ~~1.50 AC FT~~ **4.00 AC-FT**

20. Claims 41S 115273-00, 41S 115275-00, 41S 115276-00, 41S 115277-00 and 41S 115278-00 were decreed with the following 'notice' type issue remarks:

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

MEANS OF DIVERSION, POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE TIMELY FILED OBJECTION OF UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OF DIVERSION AND PLACE OF USE BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

SOURCE NAME, MEANS OF DIVERSION, POINT OF DIVERSION, AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

### **PRINCIPLES OF LAW**

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents (including objections) filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the Statement are supported by evidence.

4. Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees, Case 42B-1, ¶ 3 at p. 14, (Order Denying Motion June 27, 2014). Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claims.

### **CONCLUSIONS OF LAW**

1. The modifications proposed by the Trust as discussed in Findings of Fact #1, 4, 5,

7, 8, 10, 11, 12, 15, 17 and 18 overcome the prima facie status of the claims and should be adopted.

2. Adoption of the modifications resolves the objections and the substantive issue remarks on the claims.

3. The 'notice' type issue remarks on claims 41S 115273-00, 41S 115275-00, 41S 115276-00, 41S 115277-00 and 41S 115278-00 have served their purpose and require no additional proceedings to resolve. The remarks should be removed.

### **RECOMMENDATIONS**

1. The claims should be modified as discussed above.

2. Modification of the claims resolves the substantive issue remarks on the claims and the remarks should be removed.

3. The modifications resolve the objections to the claims and the objections should be dismissed.

4. The 'notice' type remarks require no proceedings to resolve and should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report 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 48770-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** APRIL 29, 1883

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**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		SE	22	15N	17E	FERGUS

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		W2NW	26	15N	17E	FERGUS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		NESW	26	15N	17E	FERGUS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

4		SWNWSE	26	15N	17E	FERGUS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			SE	22	15N	17E	FERGUS
2			W2NW	26	15N	17E	FERGUS
3			NESW	26	15N	17E	FERGUS



4

SWNWSE 26 15N 17E FERGUS

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

**Water Right Number:** 41S 48771-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** APRIL 29, 1883

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**\*Flow Rate:** 1.31 CFS

**\*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:** 22.00

**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		NENWSW	26	15N	17E	FERGUS

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

**Diversion Means:** PUMP/FLOOD AND DIKE

**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	22.00		SE	22	15N	17E	FERGUS

**Total:** 22.00

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

**Water Right Number:** 41S 115273-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** DECEMBER 31, 1916

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 20.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BIG SPRING CREEK, MIDDLE FORK

**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		NWNENE	30	13N	19E	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			NWNENE	30	13N	19E	FERGUS

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

**Water Right Number:** 41S 115275-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** DECEMBER 31, 1911

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**Flow Rate:** 3.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BIG SPRING CREEK, MIDDLE FORK

**Source Type:** GROUNDWATER  
THE SOURCE IS A SPRING (PIT).

**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	2	SWNWSE	29	13N	19E	FERGUS

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

**Diversion Means:** DAM/PIT

**\*Reservoir:** ONSTREAM      **Reservoir Name:** B

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
2	SWNWSE	29	13N	19E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 10.00 FEET

**Surface Area:** 0.60 ACRES

**Capacity:** 2.40 ACRE-FEET

SEE THE DECLARATION OF VESTED GROUNDWATER RIGHT IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

**Period of Use:** JUNE 1 TO OCTOBER 15

**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		2	SWNWSE	29	13N	19E	FERGUS

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

**Water Right Number:** 41S 115276-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** DECEMBER 31, 1911

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF 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		SESENW	28	13N	19E	FERGUS

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

**Diversion Means:** DAM

**\*Reservoir:** ONSTREAM **Reservoir Name:** C

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESENW	28	13N	19E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 11.00 FEET

**Depth:** 8.00 FEET

**Surface Area:** 0.37 ACRES

**Capacity:** 1.18 ACRE-FEET

SEE THE DECLARATION OF VESTED GROUNDWATER FILING IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

**Period of Use:** JUNE 1 TO OCTOBER 15

**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			SESENW	28	13N	19E	FERGUS

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

**Water Right Number:** 41S 115277-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** APRIL 5, 1919

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**Flow Rate:** 3.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

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

**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	4		28	13N	19E	FERGUS

**Period of Diversion:** JUNE 1 TO OCTOBER 15

**Diversion Means:** FLOWING

**Period of Use:** JUNE 1 TO OCTOBER 15

**\*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		28	13N	19E	FERGUS

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

**Water Right Number:** 41S 115278-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** JUNE 30, 1961

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**\*Flow Rate:** 5.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**\*Source Name:** SPRING, UNNAMED TRIBUTARY OF MARCOTT 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		NWNWNW	20	13N	19E	FERGUS

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

**Diversion Means:** PIT

**\*Reservoir:** OFFSTREAM **Reservoir Name:** E

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWNW	20	13N	19E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** MAY 15 TO NOVEMBER 15

**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			NWNWNW	20	13N	19E	FERGUS

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

**Water Right Number:** 41S 115281-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** JUNE 30, 1904

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**Flow Rate:** 15.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF MIDDLE FORK

**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		SEWNNE	19	13N	19E	FERGUS

**Period of Diversion:** MAY 15 TO NOVEMBER 15

**Diversion Means:** FLOWING

**Period of Use:** MAY 15 TO NOVEMBER 15

**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			SEWNNE	19	13N	19E	FERGUS



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

**Water Right Number:** 41S 115283-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** DECEMBER 31, 1882

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** BEAVER CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2NW	28	15N	17E	FERGUS

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NENENE	29	15N	17E	FERGUS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		S2SWSW	21	15N	17E	FERGUS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

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

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2NW	28	15N	17E	FERGUS
2			S2SWSW	21	15N	17E	FERGUS
3			NENENE	29	15N	17E	FERGUS

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

**Water Right Number:** 41S 139535-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** MAY 10, 1886

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 500.00 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:** 19.00

**Source Name:** BEAVER 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		SESWNW	28	15N	17E	FERGUS

**Period of Diversion:** MAY 1 TO SEPTEMBER 15

**Diversion Means:** PUMP

**Period of Use:** MAY 1 TO SEPTEMBER 15

**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	19.00		W2NW	28	15N	17E	FERGUS

**Total:** 19.00

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

**Water Right Number:** 41S 139537-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** DECEMBER 31, 1928

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 6.50 AC-FT

**Households:** 1

**Maximum Acres:** 2.00

**Source Name:** GROUNDWATER

**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		SWNENW	28	15N	17E	FERGUS

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

**Diversion Means:** WELL

**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	2.00		SWNENW	28	15N	17E	FERGUS
<b>Total:</b>	<u>2.00</u>						

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

**Water Right Number:** 41S 139538-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** MAY 31, 1952

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 4.00 AC-FT

**Households:** 1

**Maximum Acres:** 1.00

**Source Name:** GROUNDWATER

**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		NESEW	35	15N	17E	FERGUS

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

**Diversion Means:** WELL

**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	1.00		NESEW	35	15N	17E	FERGUS
<b>Total:</b>	<u>1.00</u>						