

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: 69 Ranch, LLC

CASE 41S-0601-R-2024

41S 119061-00

41S 211129-00

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. 69 Ranch, LLC (69 Ranch) is the record owner of claims 41S 119061-00 and 41S 211129-00.
2. Claims 41S 119061-00 and 41S 211129-00 were decreed with DNRC issue remarks:

Claim 41S 119061-00:

- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 25.57 TIMES THE CAPACITY OF THE RESERVOIR.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Claim 41S 211129-00:

- THE CLAIMED MEANS OF DIVERSION DOES NOT APPEAR STANDARDIZED AND CANNOT BE CLARIFIED FROM AVAILABLE DATA.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Additional remarks were decreed on the claims, but they are either notice-type remarks or do not require further attention.

3. 69 Ranch was ordered to meet with a DNRC employee to address the unresolved DNRC issue remarks.
4. DNRC Water Resource Specialist Carli Bluhm filed Memorandums stating the Claimant did not contact the DNRC. (Doc.* 2.00). Ms. Bluhm indicated she reviewed scanned claim files, topographic maps, the Judith County Water Resource Survey, and aerial photos to prepare the Memorandum; maps and proposed abstracts were attached to the Memorandum. Ms. Bluhm indicated that nobody contacted her on behalf of 69 Ranch.

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

Ms. Bluhm recommended the following modifications be made to claims 41S 119061-00 and 41S 211129-00 to represent the historical use of the claims and address the issue remarks:

Claim 41S 119061-00:

Volume: 4.40 AC-FT ~~46.00 AC-FT~~

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 24.50 ~~26.70~~

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	14.70		N2NW	16	12N	14E	JUDITH BASIN
2	11.00	9.80	S2SW	9	12N	14E	JUDITH BASIN
Total	24.50	25.70					

Claim 41S 211129-00

Flow Rate: 2.23 CFS ~~2.27 CFS~~

Maximum Acres: 59.00 ~~80.00~~

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	14.00	48.50	N2N2NW	16	12N	14E	JUDITH BASIN
2	46.00	10.50	S2SW	9	12N	14E	JUDITH BASIN
Total	59.00	80.00					

5. Ms. Bluhm also recommended the means of diversion for claim 41S 211129-00 be modified to “ditch.” Additionally, Ms. Bluhm noted a “potential point of diversion” for claim 41S 211129-00 but did not recommend the point of diversion be modified. Without additional information from the Claimant regarding the point of diversion and means of diversion, there is not enough information regarding the conveyance system to change what was claimed.

6. An Order was issued setting a deadline for Claimant 69 Ranch file a statement agreeing or disagreeing with the modifications recommended by Ms. Bluhm. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimant 69 Ranch Inc. agrees with the recommended modifications. 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.

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. According 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. The issue remarks decreed on claims 41S 199061-00 and 41S 211129-00 referencing modifying or adding supplemental rights remarks are not relevant. Supplemental rights remarks decreed on claims no longer include a quantified acreage figure, and ultimately supplemental rights remarks will be removed at final decree.

5. Claim 41S 211129-00 is a late claim. The late claim issue remark decreed on the claim gave notice that the claim could be subordinate, and therefore junior to certain permits and reservations of water. Any party asserting a superior claim to water based on a permit or reservation was required to file an objection to that late claim during the Basin 41S objection period. Because no such objections were filed, this remark can now be removed from the claim.

6. The notice-type issue remarks decreed on claims 41S 119061-00 and 41S 211129-00 have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claims 41S 119061-00 and 41S 211129-00 should be modified as shown in Finding of Fact No. 4.

2. The issue remarks should be removed from claims 41S 119061-00 and 41S 211129-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

69 Ranch, LLC
138 Coal Mine Coulee Rd.
Buffalo, MT 59418-8125

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

Water Right Number: 41S 119061-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: 69 RANCH LLC
138 COAL MINE COULEE RD
BUFFALO, MT 59418-8125

Priority Date: DECEMBER 31, 1931

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 4.40 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 24.50

Source Name: UNNAMED TRIBUTARY OF WEST BUFFALO 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		NENWNW	16	12N	14E	JUDITH BASIN

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

Diversion Means: HEADGATE

***Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWNW	16	12N	14E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 0.44 ACRES

Capacity: 1.76 ACRE-FEET

Period of Use: MAY 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	14.70		N2NW	16	12N	14E	JUDITH BASIN
2	9.80		S2SW	9	12N	14E	JUDITH BASIN

Total: 24.50

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

Water Right Number: 41S 211129-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: 69 RANCH LLC
138 COAL MINE COULEE RD
BUFFALO, MT 59418-8125

Priority Date: OCTOBER 13, 1882

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 12/03/1984 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.23 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: 59.00

Source Name: WEST BUFFALO 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		SWSESW	9	12N	14E	JUDITH BASIN

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Period of Use: MAY 15 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	48.50		N2N2NW	16	12N	14E	JUDITH BASIN
2	10.50		S2SW	9	12N	14E	JUDITH BASIN

Total: 59.00