

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

CLAIMANTS: Peter K. Andersen; Sharon L. Andersen

CASE 41S-0617-R-2024

41S 100141-00

41S 100142-00

41S 100143-00

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. Peter K. Andersen and Sharon L. Andersen (the Andersens) are the record owners of claims 41S 100141-00, 41S 100142-00, and 41S 100143-00.

2. The Andersens were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims 41S 100141-00, 41S 100142-00, and 41S 100143-00:

41S 100141-00:

- 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 THE E2W2SW SEC 25 TWP 16N RGE 7E FERGUS COUNTY.

41S 100142-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY(1970)APPEARS TO INDICATE 56.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-178-57 , DATED 09/18/1979 , APPEARS TO INDICATE 87.50 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41S 100143-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY(1970)APPEARS TO INDICATE 56.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-178-57 , DATED 09/18/1979 , APPEARS TO INDICATE 87.50 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

3. On May 21, 2024, DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating she “met with the claimant on April 23, 2024, and discussed the issue remarks. DNRC findings were discussed and agreed upon.” It is unclear which Claimant DNRC met with. Ms. Bluhm reported that she reviewed scanned claim files, an aerial photograph, and the 1970 aerial photograph to prepare her Memorandum and make the recommendations; she attached proposed abstracts and maps to the Memorandum. (Doc.*2.00).

* “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

4. Consistent with the issue remark decreed on claim 41S 100141-00, Ms. Bluhm recommended the place of use be modified to:

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		E2W2SW	W2SW	25	16N	17E	FERGUS

5. Ms. Bluhm identified 87.50 irrigated acres for claims 41S 100142-00 and 41S 100143-00, and she recommended the flow rates be reduced to the 17.00 gallon per acre standard:

Flow Rate: 3.31 CFS ~~4.17 CFS~~
 Maximum Acres: 87.50 ~~110.00~~

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	16.00 20.00		NWNW	31	16N	18E	FERGUS
2	38.00 35.00		W2SW	30	16N	18E	FERGUS
3	32.50 36.00		SESE	25	16N	17E	FERGUS
4	1.00 40.00		NENE	36	16N	17E	FERGUS
5	3.00		NESE	25	16N	17E	FERGUS
6	6.00		W2SE	25	16N	17E	FERGUS
Total:	87.50 110.00						

6. To determine if Claimant Peter K. Andersen and Sharon L. Anderson agreed with the recommended changes, an Order was issued, setting a deadline for the Claimants to agree or disagree with the changes recommended by Ms. Bluhm. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agreed with the recommended changes. 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.

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.

RECOMMENDATIONS

1. Claim 41S 100141-00 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		E2W2SW	W2SW	25	16N	17E	FERGUS

Claims 41S 100142-00 and 41S 100143-00 should be modified as follows:

Flow Rate: 3.31 CFS 4.17 CFS
 Maximum Acres: 87.50 110.00

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	16.00 20.00		NWNW	31	16N	18E	FERGUS
2	38.00 35.00		W2SW	30	16N	18E	FERGUS
3	32.50 36.00		SESE	25	16N	17E	FERGUS
4	1.00 10.00		NENE	36	16N	17E	FERGUS
5	3.00		NESE	25	16N	17E	FERGUS
6	6.00		W2SE	25	16N	17E	FERGUS
Total:	110.00 87.50						

Flow Rate: 36.00 GPM 25.00 GPM
 Volume: 7.00 AC-FT 8.50 AC-FT

2. The issue remarks should be removed from claims 41S 100141-00, 41S 100142-00, and 41S 100143-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Peter K. Andersen
 Sharon L. Andersen
 3962 Hanover Rd
 Lewistown, MT 59457

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

Water Right Number: 41S 100141-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PETER K ANDERSEN
3962 HANOVER RD
LEWISTOWN, MT 59457

SHARON L ANDERSEN
3962 HANOVER RD
LEWISTOWN, MT 59457

Priority Date: JUNE 30, 1898

Type of Historical Right: DECREED

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.

CASE NO. 934 IN FERGUS COUNTY DECREES ALL OF THE FLOW OF STINKING WATER CREEK.

***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

Source Type: SURFACE WATER

ALSO KNOWN AS STINKING WATER CREEK

***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		E2W2SW	25	16N	17E	FERGUS

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			E2W2SW	25	16N	17E	FERGUS

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

Water Right Number: 41S 100142-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: PETER K ANDERSEN
3962 HANOVER RD
LEWISTOWN, MT 59457

SHARON L ANDERSEN
3962 HANOVER RD
LEWISTOWN, MT 59457

Priority Date: MAY 31, 1890

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.31 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: 87.50

Source Name: BIG SPRING 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		SESENE	5	15N	18E	FERGUS

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO NOVEMBER 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	16.00		NWNW	31	16N	18E	FERGUS
2	38.00		W2SW	30	16N	18E	FERGUS
3	32.50		SESE	25	16N	17E	FERGUS
4	1.00		NENE	36	16N	17E	FERGUS

Total: 87.50

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

100142-00

100143-00

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

Water Right Number: 41S 100143-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: PETER K ANDERSEN
3962 HANOVER RD
LEWISTOWN, MT 59457

SHARON L ANDERSEN
3962 HANOVER RD
LEWISTOWN, MT 59457

Priority Date: JUNE 8, 1891

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.31 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: 87.50

Source Name: BIG SPRING 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		SESENE	5	15N	18E	FERGUS

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO NOVEMBER 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>
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Total: 87.50

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

100142-00

100143-00