

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: Circle Ranches LLC; Landon G. Phillips

OBJECTOR: Circle Ranches LLC

CASE 41S-0024-R-2024

41S 1393-00

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

Claim 41S 1393-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) and was decreed with the following issue remarks:

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

USDA AERIAL PHOTOGRAPH NO(S). 30027-178-59 , DATED 09/18/1979 AND 30027-278-188, DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

Circle Ranches, LLC (Circle Ranches) filed an objection to the claimed place of use and maximum acres, seeking to reduce the maximum acres to 35 acres.

On March 21, 2024, claimant Landon G. Phillips filed a Withdrawal of Interest in claim 1393-00 (Doc.¹ 3.00). The Withdrawal states that “[w]ater was never put to beneficial use on the part of the claimed place of use associated with my property”.

On March 25, 2024, Circle Ranches filed Documentation Resolving Objection (Doc. 4.00) which included several attachments.

FINDINGS OF FACT

1. The Documentation Resolving Objection proposes modifying claim 41S 1393-00 as follows:

Maximum Acres: ~~90.00~~ 35.00

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	30.00		E	2SE	29	17N	18E FERGUS
2	<u>60.00</u>	5.00	W2	NWSW	N2SW	28	17N 18E FERGUS

2. Landon Phillips Request to Withdraw Interest in claim 41S 1393-00 is unambiguous.

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

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

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. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The place of use modifications discussed in Finding of Fact No.1 should be accepted as a reduction.
2. The issue remark on the claim fails to overcome the prima facie status of the claim and should be removed.
3. Landon Phillips interest in the claim should be removed pursuant to the clear intent of the Request to Withdraw.

RECOMMENDATIONS

1. The place of use and maximum acres should be modified as discussed above.
2. The issue remark should be removed from the claim.
3. Landon Phillips ownership interest in the claim should be terminated pursuant to the withdrawal.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Last Order:

Landon G. Phillips
39625 MT Hwy 81
Lewistown, MT 59457

Service via Electronic Mail:

Kris A. Birdwell
Stogsdill & Birdwell, P.C.
2245 W. Main Street, Suite 511
Lewistown, MT 59457
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kris@lewistownlaw.com

Note: Service List Updated 6-11-2024

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

Water Right Number: 41S 1393-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CIRCLE RANCHES LLC
1301 5TH AVE 40TH FLR
SEATTLE, WA 98101-2603

Priority Date: JULY 29, 1970

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

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: 35.00

Source Name: WARM 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		SE	29	17N	18E	FERGUS

Period of Diversion: MARCH 15 TO OCTOBER 1

Diversion Means: PUMP

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

Period of Use: MARCH 15 TO OCTOBER 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	30.00		E2SE	29	17N	18E	FERGUS
2	5.00		W2NWSW	28	17N	18E	FERGUS

Total: 35.00