

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: Coyote Creek; Fergus County School
District #84; Fergus County School
District #1; Torger S. Oaas

CASE 41S-0606-R-2024
41S 28848-00
41S 139599-00
41S 140042-00

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. Claimants Torger S. Oaas, Coyote Creek, and Fergus County School District #1 are the record co-owners of claim 41S 28848-00. Claimant Fergus County School District #84 is the record owner of claim 41S 139599-00. Claimant Fergus County School District #1 is the record owner of claim 41S 140042-00.

2. The Claimants were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims in this Case:

Claim 41S 28848-00:

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 33.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-194 , DATED 09/25/1979 , APPEARS TO INDICATE 20.60 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

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

Claims 41S 139599-00:

THIS CLAIM AND WATER RIGHT NO. 41S 44519-00 APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

THE PRIORITY DATE MAY BE QUESTIONABLE. NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM.

Claim 41S 140042-00:

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-194 , DATED 09/25/1979 , APPEARS TO INDICATE 2.50 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

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

3. On May 2, 2024, DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating he was contacted by representatives of Coyote Creek and Fergus County School District #84. (Doc 1. 2.00). Mr. Ahlgren attached maps to the

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

Memorandum. Mr. Ahlgren stated he was not contacted by Torger S. Oaas or a representative of Fergus County School District #1.

4. **Claim 41S 28848-00** (Coyote Creek, Torger S. Oaas, Fergus County School District #1): Based on the available information, Mr. Ahlgren recommended reducing claim 41S 28848-00 as follows, addressing the issue remarks:

Flow Rate:	4.06 CFS	350.20 GPM					
Maximum Acres:	28.00	20.60					
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		SENE	22	15N	18E	FERGUS	
Period of Diversion:	MAY 15 TO NOVEMBER 15						
Diversion Means:	PUMP/FLOOD-AND-DIKE						
2		NWNE	22	15N	18E	FERGUS	
Period of Diversion:	MAY 15 TO NOVEMBER 15						
Diversion Means:	PUMP/FLOOD-AND-DIKE						
3		NENE	22	15N	18E	FERGUS	
Period of Diversion:	MAY 15 TO NOVEMBER 15						
Diversion Means:	PUMP/FLOOD-AND-DIKE						
4		SENE	22	15N	18E	FERGUS	
Period of Diversion:	MAY 15 TO NOVEMBER 15						
Diversion Means:	PUMP/FLOOD-AND-DIKE						
5		SENE	22	15N	18E	FERGUS	
Period of Diversion:	MAY 15 TO NOVEMBER 15						
Diversion Means:	PUMP/FLOOD-AND-DIKE						
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	20.60	20.60	NENE	22	15N	18E	FERGUS
Total:	28.00	20.60					

5. **Claim 41S 139599-00** (Fergus County School District #84): Claim 41S 139599-00 was previously the subject of a Closing Order in which issue remarks were added to the claim to be addressed during the Preliminary Decree. Unfortunately, the issue remark implicating groundwater certificate 41S 44519-00 was not properly updated during reexamination of the claim. The issue remark *should* have indicated that groundwater certificate 41S 44519-00 and claim 41S 139599-00 are associated rights, instead the issue remark presently on the claim was added to the claim (indicating they are duplicate filings). Mr. Ahlgren recommended the issue remark be removed and an information remark be added to claim 41S 139599-00; an associated rights remark is already present.

According to Mr. Ahlgren, the representative of Fergus County School District #84 was unable to provide a GW filing to support the claimed July 4, 1963 priority date. Mr. Ahlgren recommended the priority date for claim 41S 139599-00 be adjusted to the date of filing of the Statement of Claim. The priority date was already decreed as April 30, 1982; as such, no priority date modifications are required.

6. **Claim 41S 140042-00** (Fergus County School District #1): Based on the available information, Mr. Ahlgren recommends reducing claim 41S 140042-00 as follows, addressing the issue remarks:

Flow Rate:	124.30 GPM	42.50 GPM						
Maximum Acres:	7.00	2.50						
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	7.00	2.50	NWNE	NE	22	15N	18E	FERGUS
Total:	7.00	2.50						

7. An Order was issued setting a deadline for Claimants Torger S. Oaas, Coyote Creek, and Fergus County School District #1 to file statements agreeing or disagreeing with the following modifications to claim 41S 28848-00:

Flow Rate:	4.06 CFS	350.20 GPM				
Maximum Acres:	28.00	20.60				
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		SENE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					
Diversion Means:	PUMP/FLOOD-AND-DIKE					
2		NWNE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					
Diversion Means:	PUMP/FLOOD-AND-DIKE					
3		NENE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					
Diversion Means:	PUMP/FLOOD-AND-DIKE					
4		SENE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					
Diversion Means:	PUMP/FLOOD-AND-DIKE					
5		SENE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					
Diversion Means:	PUMP/FLOOD-AND-DIKE					

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	20.00	20.60	NENE	22	15N	18E	FERGUS
Total:	20.00	20.60					

The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agree with the proposed modifications.

The Order also set a deadline for Claimant Fergus County School District #1 to file a statement agreeing or disagreeing with the following modifications to claim 41S 140042-00:

Flow Rate:	134.30 GPM	42.50 GPM						
Maximum Acres:	7.00	2.50						
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	7.00	2.50	NWNE	NE	22	15N	18E	FERGUS
Total:	7.00	2.50						

The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimant agrees with the proposed modifications.

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 Water Court must address all issue remarks decreed on a claim. 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. 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.

RECOMMENDATIONS

1. Claims 41S 28848-00 and 41S 140042-00 should be modified as shown in Finding of Fact No. 7.

2. The issue remarks should be removed from claims 41S 28848-00, 41S 139599-00, and 41S 140042-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Coyote Creek
Donald N. McKinlay, Trustee
P.O. Box 513
Lewistown, MT 59457-0513

Fergus County School District #84
Denton Public Schools
P.O. Box 1048
Denton, MT 59430

Fergus County School District #1
215 7th Ave S.
Lewistown, MT 59457

Torger S. Oaas
P.O. Box 76
Lewistown, MT 59457

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

Water Right Number: 41S 28848-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

TORGER S OAAS
PO BOX 76
LEWISTOWN, MT 59457

COYOTE CREEK
DONALD N MCKINLAY, CO TRUSTEE
PO BOX 513
LEWISTOWN, MT 59457-0513

FERGUS COUNTY SCHOOL DISTRICT #1
215 7TH AVE S
LEWISTOWN, MT 59457

Priority Date: JUNE 30, 1968

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 350.20 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: 20.60

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		SENE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					
Diversion Means:	PUMP					
2		NWNE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					
Diversion Means:	PUMP					
3		NENE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					
Diversion Means:	PUMP					
4		SENE	22	15N	18E	FERGUS
Period of Diversion:	MAY 15 TO NOVEMBER 15					

Diversion Means: PUMP
5 SENENE 22 15N 18E FERGUS
Period of Diversion: MAY 15 TO NOVEMBER 15
Diversion Means: PUMP
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	20.60		NENE	22	15N	18E	FERGUS
Total:	20.60						

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

Water Right Number: 41S 139599-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: FERGUS COUNTY SCHOOL DIST #84
DENTON PUBLIC SCHOOLS
PO BOX 1048
DENTON, MT 59430

Priority Date: APRIL 30, 1982

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 30.00 GPM

Volume: 6.02 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 1.92

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		SESESE	16	18N	14E	FERGUS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: WELL

Period of Use: APRIL 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	1.92		SESESE	16	18N	14E	FERGUS

Total: 1.92

Remarks:

THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 41S 44519-00 . THEY ARE BASED ON THE SAME HISTORIC WATER RIGHT.

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

Water Right Number: 41S 140042-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: FERGUS COUNTY SCHOOL DISTRICT #1
215 7TH AVE S
LEWISTOWN, MT 59457

Priority Date: APRIL 1, 1955

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 42.50 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: 2.50

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		NENENE	22	15N	18E	FERGUS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: PUMP

Period of Use: APRIL 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	2.50		NWNENE	22	15N	18E	FERGUS
Total:	<u>2.50</u>						