

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: Demorise E. Allen Jr.; Frances M. Allen;
Gary G. Brewington

CASE 41S-0608-R-2024
41S 48872-00
41S 216173-00

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. Demorise E. Allen Jr., Frances M. Allen, and Gary G. Brewington (Claimants) are the record co-owners of claim 41S 48872-00. Demorise E. Allen Jr. and Frances M. Allen are the record owners of claim 41S 216173-00.

2. Demorise E. Allen Jr., Frances M. Allen, and Gary G. Brewington were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims in this Case:

41S 48872-00:

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 50.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

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

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

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-84 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

41S 216173-00:

NO PRIORITY DATE WAS CLAIMED.

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

3. On May 3, 2024 DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating he was not contacted by any of the Claimants. Mr. Ahlgren made recommendations for the disposition of the issue remarks; he attached a map and proposed abstracts. Mr. Ahlgren stated he reviewed the claim files, aerial photographs, and the Fergus County Water Resources Survey to prepare the Memorandum.

4. **Claim 41S 48872-00** (Demorise E. Allen, Jr., Frances M. Allen, and Gary G. Brewington): Mr. Ahlgren explained that DNRC was previously unable to verify any irrigated acres at the claimed place of use for claim 41S 48872-00. Mr. Ahlgren indicated that DNRC reviewed the same sources DNRC previously used in addition to another aerial photograph and was still unable to confirm historical irrigation at the claimed place of use. Consequently, Mr. Ahlgren recommended dismissal of claim 41S 48872-00.

5. **Claim 41S 216173-00** (Demorise E. Allen, Jr. and Frances M. Allen): Mr. Ahlgren recommended removal of the source issue and information remark decreed on claim 41S 216173-00. However, according to statute, statements of claim must include the date of first beneficial use – known as the “priority date.” Section 85-2-224, MCA. Claim 41S 216173-00 was claimed without a priority date. Mr. Ahlgren recommended the priority date for claim 41S 216173-00 be the date of filing of the statement of claim. Adding a priority date to match the filing date for the statement of claim is a solution unique to groundwater filings. Claim 41S 216173-00 is a surface water claim where no priority date was claimed. Without additional information, it is unclear if claim 41S 216173-00 is a historical right or a post-1973 right.

6. An Order was issued setting deadlines for Claimants Demorise E. Allen, Jr., Frances M. Allen, and Gary G. Brewington file statements agreeing or disagreeing that claim 41S 48872-00 should be dismissed. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Claimants Demorise E. Allen, Jr., Frances M. Allen, and Gary G. Brewington agree claim 41S 48872-00 should be dismissed and the forthcoming Master’s Report would recommend dismissal of the claim. Another deadline was set for Claimants Demorise E. Allen, Jr. and Frances M. Allen to file statements agreeing or disagreeing that claim 41S 216173-00 should be dismissed. The Order indicated that if nothing were filed by the deadline, this Water Master will conclude that Claimants Demorise E. Allen, Jr. and Frances M. Allen agree claim 41S 216173-00 should be dismissed and the forthcoming Master’s Report would recommend dismissal of the claim. 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.

7. On May 29, 2024, Claimant Gary Brewington filed a statement indicating agreement with the proposed dismissal of claim 41S 48872-00. (Doc. 4.00). Nothing was filed by Claimants Demorise E. Allen, Jr. and Frances M. Allen

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.

RECOMMENDATION

1. Claims 41S 48872-00 and 41S 216173-00 should be dismissed.
Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Demorise E. Allen Jr.
Frances M. Allen
1782 Garneill Rd
Garneill, MT 59445

Gary G. Brewington
P.O. Box 176
Judith Gap, MT 59453-0176

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

Water Right Number: 41S 48872-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DEMORISE E ALLEN JR
1782 GARNEILL RD
GARNEILL, MT 59445

FRANCES M ALLEN
1782 GARNEILL RD
GARNEILL, MT 59445

GARY G BREWINGTON
PO BOX 176
JUDITH GAP, MT 59453-0176

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: MEADOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 216173-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DEMORISE E ALLEN JR
1782 GARNEILL RD
GARNEILL, MT 59445

FRANCES M ALLEN
1782 GARNEILL RD
GARNEILL, MT 59445

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: MEADOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.