

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: James H. Turner; Joyce A. Turner; Cristy
Loose; David J. Dirkson

CASE 41S-0624-R-2024

41S 12562-00

41S 13392-00

41S 16506-00

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. The record co-owners of stock water claim 41S 12562-00 are James H. Turner and Joyce A. Turner. The record owner of irrigation claim 41S 13392-00 is Cristy Loose. The record owner of irrigation claim 41S 16506-00 is David J. Dirkson.

2. Claims 41S 12562-00, 41S 13392-00, and 41S 16506-00 are all based on the July 5, 1902 Thomas Nicholson right from Ross Creek for 50 miner's inches. Presently, the claims overclaim the Nicholson right, and the following DNRC issue remark was decreed on the claims:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 12562-00, 41S 13392-00, 41S 16506-00

3. Claimants Cristy Loose (claim 41S 13392-00) and David J. Dirkson (claim 41S 16506-00) were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims 41S 13392-00 and 41S 16506-00:

41S 13392-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 44.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-110, DATED 09/17/1979, APPEARS TO INDICATE 43.20 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 67.44 TIMES THE CAPACITY OF THE RESERVOIR.
- VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

41S 16506-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-110, DATED 09/17/1979, 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.

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum regarding her review of the claims. (Doc.1 2.00). Ms. Bluhm indicated she was contacted by Cristy Loose and Ms. Loose stated she “had no objections to the findings of the DNRC.” Ms. Bluhm also reported that she spoke with Nick Dirkson who was going to provide additional information, and none was provided. This Water Master assumes Nick Dirkson is related to David J. Dirkson.

Ms. Bluhm reported that she reviewed information in the claim files, aerial photographs, and the 1970 Fergus County Water Resources Survey to prepare the Memorandum and make the recommendations; a marked aerial photograph and a proposed abstract for claim 41S 13392-00 were attached to the Memorandum.

5. **Claim 41S 13392-00** (Cristy Loose): Ms. Bluhm indicated the following modifications represent the historical use of claim 41S 13392-00:

*Volume:	10.87	200.00-AC-FT					
Maximum Acres:	44.00	80.00					
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	10.00	30.00	NWNE	24	14N	14E	JUDITH BASIN
2	10.00	46.00	E2SWSE	13	14N	14E	JUDITH BASIN
3	14.00	45.00	SESE	13	14N	14E	JUDITH BASIN
Total:	44.00	80.00					

6. **Claim 41S 16506-00** (David J. Dirkson): Ms. Bluhm found no evidence to support an appropriation of water for claim 41S 16506-00. Ms. Bluhm recommended claim 41S 16506-00 be dismissed.

7. **Possible multiple use:** Claims 41S 12562-00 (James H. Turner and Joyce Turner) and 41S 13392-00 (Cristy Loose) appear to be multiple uses of the same historical water right. Multiple uses are more than one water historical appropriation used for different purposes.

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

Stock water claim 41S 12562-00 and irrigation claim 41S 13392-00 were both filed by James H. Turner and Joyce A. Turner on March 9, 1981 using identical documentation. Based on available information, it appears the claims are multiple uses of the same historical right. Additionally, with the proposed dismissal of claim 41S 16506-00, adding a multiple use remark to claims 41S 12562-00 and 13392-00 resolves the over-filed notice of appropriation issue remark decreed on the claims.

8. An Order was on May 7, 2024, setting a deadline for Claimant Cristy Loose to file a statement agreeing or disagreeing with the following recommended changes to claim 41S 13392-00:

*Volume:	10.87	200.00 AC-FT					
Maximum Acres:	44.00	80.00					
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	10.00 30.00		NWNE	24	14N	14E	JUDITH BASIN
2	10.00 16.00		E2SWSE	13	14N	14E	JUDITH BASIN
3	14.00 15.00		SESE	13	14N	14E	JUDITH BASIN
Total:	60.00 44.00						

The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Cristy Loose agrees with the proposed changes and a Master's Report would be issued recommending the changes be made to claim 41S 13392-00.

The Order set a deadline for Claimant David J. Dirkson to file a statement agreeing or disagreeing that claim 41S 16506-00 be dismissed and indicated that if nothing were filed by the deadline, this Water Master would conclude David J. Dirkson agrees with the proposed dismissal.

And the Order set a deadline Claimants Cristy Loose, James H. Turner, and Joyce Turner agree or disagree that a multiple use information remark should be added to claims 41S 12562-00 and 41S 13392-00. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Cristy Loose, James H. Turner, and Joyce Turner agree the multiple use remark should be added to the claims.

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.

9. Upon review of the DNRC Memorandum and the May 7, 2024 Order, a clerical error was noted. The maximum acres and place of use total for claim 41S 13392-00 should have reflected 34.00 acres, rather than 44.00 acres, as follows:

Maximum Acres:		44.00	34.00				
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	30.00		NWNE	24	14N	14E	JUDITH BASIN
2	14.00		E2SWSE	13	14N	14E	JUDITH BASIN
3	15.00		SESE	13	14N	14E	JUDITH BASIN
Total:	60.00						34.00

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on claims. Sections 85-2-247 and 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. Under 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. Claims 41S 12562-00 and 41S 13392-00 were decreed with notice-type issue remarks. As no objections were filed, no further proceedings are needed.

RECOMMENDATIONS

1. A multiple use information remark should be added to claim 41S 12562-00 and 41S 13392-00.

2. Claim 41S 13392-00 should be modified as follows:

*Volume: 10.87 ~~200.00~~ AC-FT
Maximum Acres: 34.00 ~~60.00~~

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	10.00 30.00		NWNE	24	14N	14E	JUDITH BASIN
2	10.00 45.00		E2SWSE	13	14N	14E	JUDITH BASIN
3	14.00 15.00		SESE	13	14N	14E	JUDITH BASIN
Total:	60.00 34.00						

3. Claim 41S 16506-00 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:

Cristy Loose
2616 Black Bull Rd
Hobson, MT 59452

David J. Dirkson
P.O. Box 335
Hobson, MT 59452

Service Via Electronic Mail:

Oliver J. Urick
Clare N. Ols
Urick Law Firm PLLC
P.O. Box 556
Stanford, MT 59479
ourick@uricklawfirm.com
cols@uricklawfirm.com

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

Water Right Number: 41S 12562-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAMES H TURNER
PO BOX 370
HOBSON, MT 59452-0370

JOYCE A TURNER
PO BOX 370
HOBSON, MT 59452-0370

Priority Date: JULY 5, 1902

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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 HAUCK COULEE

Source Type: SURFACE WATER
ALSO KNOWN AS LAKE 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		SWNWNE	24	14N	14E	JUDITH BASIN

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWNE	24	14N	14E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

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			SWNWNE	24	14N	14E	JUDITH BASIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

12562-00

13392-00

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

Water Right Number: 41S 13392-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: CRISTY LOOSE
2616 BLACK BULL RD
HOBSON, MT 59452

Priority Date: JULY 5, 1902

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

Volume: 10.67 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 34.00

***Source Name:** UNNAMED TRIBUTARY OF HAUCK COULEE

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		SWNWNE	24	14N	14E	JUDITH BASIN

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

Diversion Means: DAM

HEADGATE USED AS AN ADDITIONAL MEANS OF DIVERSION.

***Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWNE	24	14N	14E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 14.00 FEET

Depth: 11.00 FEET

Surface Area: 0.97 ACRES

Capacity: 4.27 ACRE-FEET

Period of Use: APRIL 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	10.00		NWNE	24	14N	14E	JUDITH BASIN
2	10.00		E2SWSE	13	14N	14E	JUDITH BASIN
3	14.00		SESE	13	14N	14E	JUDITH BASIN

Total: 34.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

12562-00

13392-00

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

Water Right Number: 41S 16506-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: DAVID J DIRKSON
PO BOX 335
HOBSON, MT 59452-0335

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF HAUCK COULEE

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.