

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: Larry J. Gill; Terry W. Gill; Tyrel Gill

CASE 41S-0927-R-2024
41S 148288-00
41S 148290-00
41S 148291-00

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. Tyrel Gill is the record owner of domestic claim 41S 148288-00. Tyrel Gill, Larry J. Gill, and Terry W. Gill are the record co-owners of irrigation claims 41S 148290-00 and 41S 148291-00.

2. **Claim 41S 148288-00:** Claim 41S 148288-00 was decreed with the following point 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		NWNENE	24	14N	18E	FERGUS

The place of use was decreed as:

<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	1.00		NWNENE	24	13N	18E	FERGUS
Total:	1.00						

An issue remark was decreed on claim 41S 148288-00 indicating the Township should be modified so the place of use matches the point of diversion:

THE PLACE OF USE APPEARS TO BE INCORRECT. IT APPEARS THE TOWNSHIP SHOULD ACTUALLY BE 14N RATHER THAN 13N AS PREVIOUSLY DECREED.

3. **Claims 41S 148290-00 and 41S 148291-00:** Claims 41S 148290-00 and 41S 148291-00 were both decreed with 548.00 acre-feet volumes. Both claims were decreed with issue remarks indicating the volumes exceed the maximum feasible volume (273.70 acre-feet):

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 273.70 ACRE-FEET PER YEAR.

4. An Order was issued setting a deadline for Claimant Tyrel Gill to agree or disagree that the point of diversion of claim 41S 148288-00 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	1.00		NWNENE	24	14N	18E	FERGUS
Total:	1.00						

The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Tyrel Gill agrees with the proposed change to claim 41S 148288-00.

The Order also set a deadline for Claimants Tyrel Gill, Larry J. Gill, and Terry W. Gill to file a statement agreeing or disagreeing that the volume for claims 41S 148290-00 and 41S 148291-00 be reduced to 273.70 acre-feet. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agree the volume for claims 41S 148290-00 and 41S 148291-00 should be 273.70 acre-feet. 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.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 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. 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.

4. In addition to the issue remark, claim 41S 148290-00 included a notice-type remark; as no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The place of use for claim 41S 148288-00 should 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	1.00		NWNE	24	14N	18E	FERGUS
Total:	1.00						

2. The volume for claims 41S 148290-00 and 41S 148291-00 should be 273.70 acre-feet.
3. The issue remarks should be removed from the claims in this Case.
Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Larry J. Gill
2955 Castle Creek Rd
Lewistown, MT 59457

Terry W. Gill
480 Gill Lane
Lewistown, MT 59457

Tyrel Gill
5760 Palomino Ct
Helena, Mt 59602-8983

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

Water Right Number: 41S 148288-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TYREL GILL
5760 PALOMINO CT
HELENA, MT 59602-8983

Priority Date: DECEMBER 31, 1908

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 4.00 AC-FT

Households: 2

Maximum Acres: 1.00

Source Name: SPRING, UNNAMED TRIBUTARY OF CASTLE CREEK

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		NWNENE	24	14N	18E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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	1.00		NWNENE	24	14N	18E	FERGUS

Total: 1.00

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

Water Right Number: 41S 148290-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: LARRY J GILL
2955 CASTLE CREEK RD
LEWISTOWN, MT 59457

TERRY W GILL
480 GILL LANE
LEWISTOWN, MT 59457

TYREL GILL
5760 PALOMINO CT
HELENA, MT 59602-8983

Priority Date: OCTOBER 15, 1894

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 336.60 GPM

Volume: 273.70 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 40.00

Source Name: CASTLE 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		NE	24	14N	18E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

2		SWNE	24	14N	18E	FERGUS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

PUMP LOCATION TRANSITORY ALL ALONG SOURCE PLUS DIVERSION BY HEADGATE.

Period of Use: APRIL 15 TO OCTOBER 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	35.40		E2NE	24	14N	18E	FERGUS

2	4.60	S2SWNE	24	14N	18E	FERGUS
Total:	<u>40.00</u>					

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.

148290-00 148291-00

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

Water Right Number: 41S 148291-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: LARRY J GILL
2955 CASTLE CREEK RD
LEWISTOWN, MT 59457

TERRY W GILL
480 GILL LANE
LEWISTOWN, MT 59457

TYREL GILL
5760 PALOMINO CT
HELENA, MT 59602-8983

Priority Date: OCTOBER 15, 1894

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 336.60 GPM

Volume: 273.70 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 40.00

Source Name: CASTLE 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		NE	24	14N	18E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

2		NWSESE	25	14N	18E	FERGUS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

PUMP LOCATION TRANSITORY ALL ALONG SOURCE PLUS DIVERSION BY HEADGATE.

Period of Use: APRIL 15 TO OCTOBER 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	35.40		E2NE	24	14N	18E	FERGUS

2	4.60	S2SWNE	24	14N	18E	FERGUS
Total:	<u>40.00</u>					

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.

148290-00 148291-00