

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

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CLAIMANTS: Deena M. Birdwell; Jason W. Birdwell

**CASE 41S-0689-R-2024**  
41S 101644-00

**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. Mining claim 41S 101644-00 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		E2NWSE	38	18N	17E	FERGUS

2. A DNRC point of diversion issue remark was decreed on claim 41S 101644-00:

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

3. The DNRC examination notes did not provide any information explaining why the issue remark was placed on claim 41S 101644-00.

4. No objections were filed.

**PRINCIPLES OF LAW**

1. 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.

2. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

**CONCLUSION OF LAW**

1. The issue remark decreed on claim 41S 101644-00 is not supported by evidence sufficient to overcome the prima facie status afforded the point of diversion of the claim.

**RECOMMENDATION**

1. The issue remark should be removed from claim 41S 101644-00 with no changes to the elements of the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Jason W. Birdwell  
Deena M. Birdwell  
3383 Upper Spring Creek Rd  
Lewistown, MT 59457-8889

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

**Water Right Number:** 41S 101644-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DEENA M BIRDWELL  
3383 UPPER SPRING CREEK RD  
LEWISTOWN, MT 59457-8889

JASON W BIRDWELL  
3383 UPPER SPRING CREEK RD  
LEWISTOWN, MT 59457-8889

**Priority Date:** MAY 19, 1969

**Type of Historical Right:** FILED

**Purpose (Use):** MINING

**Flow Rate:** 20.00 GPM

**\*Volume:** THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF IRON GULCH

**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		E2NWSE	36	18N	17E	FERGUS

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 1 TO OCTOBER 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			NWSE	36	18N	17E	FERGUS