

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

\*\*\*\*\*

CLAIMANT: Rodney T. Brook

CASE 41S-0725-R-2024  
41S 216178-00

**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. Rodney T. Brook is the record owner of livestock direct from source claim 41S 216178-00.

2. Claim 41S 216178-00 was decreed without a priority date and the following issue remark was decreed on claim 41S 216178-00:

NO PRIORITY DATE WAS CLAIMED.

All issue remarks must be resolved. Additionally, all claims must have a priority date.

3. Review of the record showed that the Statement of Claim filed by Clara M. Allen on July 1, 1996 failed to include a priority date:

12. Check one:

- Decreed Water Right
- Filed Appropriation Right
- Use Water Right

Priority date 'or date of first use  
\_\_\_\_/\_\_\_\_/\_\_\_\_  
Hour      Month      Day      Year

Without a priority date, claim 41S 216178-00 is not an enforceable water right. An Order was issued, providing Claimant Rodney T. Brook the opportunity to file evidence supporting a priority date for claim 41S 216178-00. (Doc.<sup>1</sup>1.00).

4. On May 16, 2024, Claimant Rodney T. Brook filed Evidence Regarding Priority Date. (Doc. 3.00). The May 16, 2024 filing shows the places of use described by claim 41S 216178-00 were patented by William Dohrs and Jean L. Story on November 16, 1891.

**PRINCIPLES AND CONCLUSIONS OF LAW**

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

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

claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Claimant Rodney T. Brook has provided fee patent information to substantiate a November 16, 1891 priority date for claim 41S 216178-00.

RECOMMENDATIONS

1. A November 16, 1891 priority date should be added to claim 41S 216178-00.

2. The issue remark should be removed from 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:**

Rodney T. Brook  
PO Box 412  
Harlowton, MT 59036  
*(Last Order)*

**Service Via Electronic Mail:**

**Peter B. Taylor**  
**Lund Law PLLC**  
**662 S. Ferguson Ave., Unit2**  
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**Service List Updated: 5/20/2024**

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

**Water Right Number:** 41S 216178-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** RODNEY T BROOK  
PO BOX 412  
HARLOWTON, MT 59036-0412

**Priority Date:** NOVEMBER 16, 1891

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** ROSS FORK 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		W2W2	19	12N	16E	FERGUS

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		N2NENE	24	12N	15E	FERGUS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			W2W2	19	12N	16E	FERGUS
2			N2NENE	24	12N	15E	FERGUS

**Remarks:**

CLAIM FILED 07/01/1996 . THIS IS AN EXEMPT RIGHT VOLUNTARILY FILED UNDER SECTION 85-2-222, MCA.