

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANT: Cindy M. Fanska

CASE 41S-0847-R-2024
41S 138269-00

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. Cindy M. Fanska’s domestic claim 41S 138269-00 was decreed with the following point of diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N	12	16N	19E	FERGUS

2. The following DNRC point of diversion issue remark was decreed on claim 41S 138269-00:

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

3. The DNRC examination notes did not include any information explaining why the issue remark was placed on claim 41S 138269-00.

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 138269-00 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 138269-00 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:

Cindy M. Fanska
1773 Springview Ct
Bozeman, MT 59718-4815

\\UDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41S PD\Cases\847\41S-0847-R-2024 MR 5.15.24 rc.docx

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

Water Right Number: 41S 138269-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CINDY M FANSKA
1773 SPRINGVIEW CT
BOZEMAN, MT 59718-4815

Priority Date: DECEMBER 31, 1956

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: ALPINE GULCH

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		NWSENE	12	16N	19E	FERGUS

Period of Diversion: JUNE 15 TO OCTOBER 15

Diversion Means: OTHER DIVERSION

MEANS OF DIVERSION INCLUDES A SLUICE BOX, BUCKET, OR OTHER CONTAINER.

Period of Use: JUNE 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			NWSENE	12	16N	19E	FERGUS