

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: Bart A. Gossack; Kirk V. Gossack; Vincent  
Gossack

CASE 41S-0935-R-2024  
41S 1389-00

**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. Irrigation claim 41S 1389-00 was decreed with 421.87 gallon per minute flow rate and the following flow rate issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 60.00 GPM PER ACRE.

2. No objections were filed to claim 41S 1389-00.

### **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 a claim. Section 85-2-248, MCA.

### **CONCLUSION OF LAW**

1. The flow rate issue remark decreed on claim 41S 1389-00 is not supported by evidence sufficient to overcome the prima facie status of this historically decreed claim.

### **RECOMMENDATION**

1. The issue remark should be removed from claim 41S 1389-00.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Bart A. Gossack  
Kirk V. Gossack  
Vincent Gossack  
2659 Joyland Rd  
Lewistown, MT 59457

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

**Water Right Number:** 41S 1389-00 STATEMENT OF CLAIM  
**Version:** 5 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BART A GOSSACK  
2659 JOYLAND RD  
LEWISTOWN, MT 59457  
  
KIRK V GOSSACK  
2659 JOYLAND RD  
LEWISTOWN, MT 59457  
  
VINCENT L GOSSACK  
2659 JOYLAND RD  
LEWISTOWN, MT 59457-1580

**Priority Date:** DECEMBER 31, 1884

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 421.87 GPM

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 7.00

**Source Name:** BIG SPRING 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		SESENE	5	15N	18E	FERGUS

**Period of Diversion:** JUNE 1 TO SEPTEMBER 20

**Diversion Means:** HEADGATE

**Period of Use:** JUNE 1 TO SEPTEMBER 20

**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	7.00		W2NE	5	15N	18E	FERGUS

**Total:** 7.00