

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

CLAIMANTS: Alexis C. Heiken; Grant Heiken; Robert K.
Orms; Sarah Orms

CASE 41S-0688-R-2024
41S 5573-00

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, conclusion 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. Alexus C. Heiken, Grant Heiken, Robert K. Orms, and Sarah Orms (the Claimants) are the record owners of irrigation claim 41S 5573-00.
2. The Claimants were ordered to meet with a DNRC employee to address the following issue remarks decreed on claim 41S 5573-00:
 - FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
 - THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
 - USDA AERIAL PHOTOGRAPH NO(S). 30027-278-210 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
 - THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Initially, the Claimants failed to meet with the DNRC and DNRC Water Resources Specialist Brandon Ahlgren filed a Memorandum reporting that he identified 12.11 acres irrigating at the claimed place of use. However, Mr. Ahlgren stated that the acreage did not appear to be irrigated from the source and headgate claimed. Mr. Ahlgren recommended that claim 41S 5573-00 be dismissed. (Doc.¹2.00).

3. At the request of the Claimants, another deadline was set for them to meet with Mr. Ahlgren.

4. On October 22, 2024, Mr. Ahlgren filed another Memorandum reporting that he met with Sarah Orms, Robert Orms and Grant Heiken to discuss claim 41S 5573-00. (Doc. 8.00). Mr. Ahlgren stated that the Claimants submitted additional aerial photos for his review and they supplied information relevant to resolution of the issue remarks. Mr. Ahlgren indicated that based on his review of the information provided by the Claimants, maximum acres/place of use does not require modification. Mr. Ahlgren also indicated that he is satisfied that the point of diversion is located at the claimed location:

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

During initial examination, the DNRC was unable to locate the claimed headgate. The claimants shared that historically, there has never been a headgate used to divert water but instead water is piped directly out of the source. This is supported by aerial photographs which show faint lines that run into the claimed place of use (Attachment 4). This claim was amended by the claimant in 1983, and although it was not noted on the amendment form, the amended claim map showed a change in the location of the point of diversion. This change in point of diversion location was implemented by the DNRC. The DNRC believes that although the means of conveyance was claimed "Headgate", that when the claimant amended the claim in 1983 the claimant should have included a change in means of conveyance to "Pipeline". Suggesting a modification to the means of conveyance is outside the scope of the order given to the DNRC. Regarding the specific issue remark, the DNRC is satisfied that the point of diversion is located at SESESE Sec. 15, T14N, R19E which is what was indicated on the amended claim map. This is the legal land description which appeared in the preliminary decree.

Mr. Ahlgren recommended the issue remarks be removed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim. Section 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. Montana law allows claimants to amend statements of claim after the objection period in a basin has closed pursuant to Section 85-2-233(6), MCA. Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooey v. Petrolane Steel Gas, Inc.* (1985), 218 Mont. 418, 422-423.

The September 22, 1980 Statement of Claim for 41S 5573-00 claimed the means of diversion as "headgate and ditch or pipe:"

7. Means of Diversion:

- Pump Capacity _____ gpm
 Headgate and ditch or pipe
 Flood and dike

The DNRC standardized the means of diversion to "headgate", but contemporary review indicates "pipeline" was the correct means of diversion.

4. Correcting the means of diversion does not have a reasonable potential to adversely affect other water users and therefore does not require further notice as provided for in Section 85-2-233(6), MCA. The change does not constitute an expansion of the claims, it merely reflects corrections to the paper water right. The use of claim 41S 5573-00 on the ground has not changed.

RECOMMENDATIONS

1. The means of diversion for claim 41S 5573-00 should be modified from “headgate” to “pipeline.”

2. The issue remarks should be removed from claim 41S 5573-00.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Alexus C. Heiken
Grant Heiken
1276 Red Hill Rd
Lewistown, MT 59457-8867

Robert K. Orms
Sarah Orms
480 Gill Ln
Lewistown, MT 59457-8733

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

Water Right Number: 41S 5573-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALEXUS C HEIKEN
1276 RED HILL RD
LEWISTOWN, MT 59457-8867

GRANT HEIKEN
1276 RED HILL RD
LEWISTOWN, MT 59457-8867

ROBERT K ORMS
480 GILL LN
LEWISTOWN, MT 59457-8733

SARAH ORMS
480 GILL LANE
LEWISTOWN, MT 59457-8733

Priority Date: APRIL 23, 1890

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.14 CFS

***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: 30.00

Source Name: BIG SPRING CREEK, EAST FORK

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		SESESE	15	14N	19E	FERGUS

Period of Diversion: MAY 15 TO OCTOBER 10

Diversion Means: PIPELINE

Period of Use: MAY 15 TO OCTOBER 10

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	25.00		SWSW	14	14N	19E	FERGUS
2	5.00		SESESE	15	14N	19E	FERGUS

Total: 30.00