

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

FILED
10/29/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0714-R-2024
Stern, Anika
5.00

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

CLAIMANT: Russell P. Bradley

CASE 41S-0714-R-2024
41S 135410-00
41S 135413-00

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. Russell P. Bradley (Bradley) is the record owner of claims 41S 135410-00 and 41S 135413-00.

2. Bradley was ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims 41S 135410-00 and 41S 135413-00:

Claim 41S 135410-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY(1970)APPEARS TO INDICATE 8.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-84 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 3.55 TIMES THE CAPACITY OF THE RESERVOIR.

Claim 41S 135413-00:

- 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). 30027-278-84 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE, AS CLAIMED, CANNOT BE IDENTIFIED FROM AVAILABLE DATA. SEE REEXAMINATION NOTES ON EXAMINATION WORKSHEET DATED 09/23/1997 FOR MORE INFORMATION.

3. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating Claimant Russell P. Bradley met with the DNRC on August 8, 2024. (Doc.¹ 3.00). Mr. Ahlgren indicated he reviewed scanned claim files and a Fergus County Water Resource Survey aerial photo to prepare the Memorandum. Proposed abstracts and a map were attached to the Memorandum.

4. **41S 135410-00:** Mr. Ahlgren confirmed 8.00 acres of historical irrigation for claim 41S 135410-00. Additionally, Mr. Ahlgren stated:

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

The volume of this claim is excessive for the size of the reservoir involved. The reservoir has a capacity of 42.36 Acre-Feet. Using the standard of 2.5 fills a year, the volume of this water right should be 105.9 Acre-Feet.

A specific flow rate has not been decreed for this use from this onstream reservoir in accordance with the Water Courts 2012 Reexamination Order. No quantified flow rate should be added.

5. **41S 135413-00:** Mr. Ahlgren confirmed 21.28 acres of historical irrigation for claim 41S 135413-00 and he recommended the flow rate be reduced to 361.80 gallons per minute (gpm), consistent with the flow rate guideline. Mr. Ahlgren stated that he could “confidently identify the point of diversion at the NWNESW Sec. 8 T11N R16E.”

6. An Order was issued to verify Bradley’s agreement with Mr. Ahlgren’s recommendations. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Bradley agrees with Mr. Ahlgren’s recommendations. (Doc. 4.00). The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed.

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. The period of diversion and reservoir issue remarks decreed on claim 41S 135410-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The following modifications should be made to claim 41S 135410-00:

Volume: 105.90 160.70 AC-FT
Maximum Acres: 8.00 66.00
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	8.00 30.00		SE	5	11N	16E	FERGUS
2	25.00		NESW	6	11N	16E	FERGUS
Total:	55.00	8.00					

The following modifications should be made to claim 41S 135413-00:

Flow Rate: 361.80 372.62 GPM
Maximum Acres: 21.28 22.00
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	NWNESW SWNWSE		8	11N	16E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15
Diversion Means: HEADGATE
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	21.28 22.00		W2NW	8	11N	16E	FERGUS
Total:	22.00	21.28					

2. The issue remarks should be removed from claims 41S 135410-00 and 41S 135413-00.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Russell P. Bradley
PO Box 171
Judith Gap, MT 59453-0171

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

Water Right Number: 41S 135410-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RUSSELL P BRADLEY
PO BOX 171
JUDITH GAP, MT 59453-0171

Priority Date: JUNE 28, 1951

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 105.90 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 8.00

Source Name: UNNAMED TRIBUTARY OF 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		SWSWSW	4	11N	16E	FERGUS

***Period of Diversion:** APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

***Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSW	4	11N	16E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 10.59 ACRES

Capacity: 42.36 ACRE-FEET

Period of Use: APRIL 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	8.00		SE	5	11N	16E	FERGUS

Total: 8.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

135407-00

135410-00

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

Water Right Number: 41S 135413-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RUSSELL P BRADLEY
PO BOX 171
JUDITH GAP, MT 59453-0171

Priority Date: APRIL 20, 1944

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 361.80 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: 21.28

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		NWNESW	8	11N	16E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 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	21.28		W2NW	8	11N	16E	FERGUS
Total:	21.28						