

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: Shirley L. Brown; Lisa M. Lucas; Bruce A.
Brown Disclaimer Trust; Lucas Family Trust

CASE 41S-0726-R-2024
41S 22900-00

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. Shirley L. Brown, Lisa M. Lucas, the Bruce A. Brown Disclaimer Trust; and the Lucas Family Trust are the record co-owners of claim 41S 22900-00.

2. Claim 41S 22900-00 was decreed with DNRC issue remarks:

- THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.
- RESERVOIR RECORD AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
- A LATE OBJECTION WAS FILED ON 08/15/2000 BY RUSSELL HUNNEWELL TO DELETE PLACE OF USE PARCEL NO. 2. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

3. The first two issue remarks note opportunities to object to the claim during the Preliminary Decree objection period; no objections were filed and the issue remarks can be removed without further process.

4. The late objection referenced in the third issue remark refers to an objection file by Russell Hunnewell in August 2000, indicating the following:

8. State the changes that you think should be made to this claim and why. State the specific ground and evidence on which the objections are based. (Use additional paper if necessary).
Please Remove the following legal description.
SWNW SW, Section 21, 18N 17E
From the place of use Water Right # 41S-W022900-00
I am the owner of this property and the claimant
has no legal claim to this property.
Dated this 14th day of August, 2000.

Russell R. Hunnewell
Signature of Objector or
Objector's Attorney

The objection deadline for the Temporary Preliminary Decree in Basin 41S passed in 1984. Because the Hunnewell objection was overdue, an issue remark was added to claim 41S 22900-00 to ensure the objection could be addressed during the Preliminary Decree in Basin 41S. The Preliminary Decree was issued on August 18, 2022.

To determine if Russell Hunnewell would pursue the late objection to claim 41S 22900-00, an Order was issued. The Order indicated that if nothing were filed by the

September 27, 2024 deadline, dismissal of the late objection would be recommended in the forthcoming Master's Report. Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

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. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The notice-type issue remarks decreed on claim 41S 22900-00 have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Russell Hunnewell's late objection to claim 41S 22900-00 should be dismissed for failure to prosecute.

2. The issue remarks should be removed from claim 41S 22900-00.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Russell Hunnewell
3209 9th St NE
Great Falls, MT 59404
(Late Objector)

Shirley L. Brown
5373 Plum Creek Rd
Lewistown, MT 59457

Lisa M. Lucas
7920 72 Bench Rd
Lewistown, MT 59457-2242

Bruce A. Brown Disclaimer Trust
c/o Patrick L. Brown Trustee
983 Black Cow Trail
Lewistown, MT 59457

Lucas Family Trust
Glen L Hough, Trustee
5301 Homer Davis Rd
Shepherd, MT 59079

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

Water Right Number: **41S 22900-00 STATEMENT OF CLAIM**

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
SHIRLEY L BROWN
5373 PLUM CREEK RD
LEWISTOWN, MT 59457

LISA M LUCAS
7920 72 BENCH RD
LEWISTOWN, MT 59457-2242

BROWN, BRUCE A DISCLAIMER TRUST
% BROWN, PATRICK L TRUSTEE
983 BLACK COW TRL
LEWISTOWN, MT 59457

LUCAS FAMILY TRUST
GLEN L HOUGH, TRUSTEE
5301 HOMER DAVIS RD
SHEPHERD, MT 59079

Priority Date: DECEMBER 31, 1952

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: UNNAMED TRIBUTARY OF HAMILTON COULEE

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENESE	20	18N	17E	FERGUS

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

Diversion Means: DAM

***Reservoir:** ONSTREAM **Reservoir Name:** 3

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
SENESE		20	18N	17E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 12.00 FEET

Depth: 9.00 FEET

Surface Area: 2.91 ACRES

Capacity: 26.19 ACRE-FEET

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			SENESE	20	18N	17E	FERGUS
2			SWNWSW	21	18N	17E	FERGUS