

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

CLAIMANTS: Jo Anne Roos; Shirley L. Brown

CASE 41S-0734-R-2024

41S 134167-00

41S 134168-00

41S 134169-00

41S 134170-00

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. Jo Anne Roos and Shirley L. Brown (the Claimants) are the record owners of claims 41S 134167-00, 41S 134168-00, 41S 134169-00, and 41S 134170-00

2. Claims 41S 134167-00, 41S 134168-00, 41S 134169-00, and 41S 134170-00 were decreed with DNRC issue remarks:

41S 134167-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY(1970)APPEARS TO INDICATE 9.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-185 , DATED 09/25/1979, AND 30027-178-63, DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41S 134168-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY(1970)APPEARS TO INDICATE 9.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-185 , DATED 09/25/1979, AND 30027-178-63, DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41S 134169-00:

- 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). 30027-278-185 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

41S 134170-00:

- DIVERSION MEANS WAS 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.

3. The Claimants were ordered to meet with the DNRC to address the place of use/maximum acres and flow rate issue remarks.

4. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating Claimants Shirley Brown and Jo Anne Roos contacted the DNRC, and he met

with Ms. Brown. (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.

5. **Claims 41S 134167-00 and 41S 134168-00:** Mr. Ahlgren identified 9.00 acres as irrigated at the claimed place of use for claims 41S 134167-00 and 41S 134168-00 and he stated “The claimant was unable to supply any evidence to substantiate more acreage than what was identified during examination.” Mr. Ahlgren recommended the place of use be modified to 9.00 acres and the flow rate be reduced accordingly for both claims:

Flow Rate: 153.00 408.44 GPM
 Maximum Acres: 9.00 24.00

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	5.00		E2E2SE	32	18N	18E	FERGUS
2	4.00 19.00		S2SW	33	18N	18E	FERGUS
Total:	24.00 9.00						

6. **Claim 41S 134169-00:** Mr. Ahlgren identified 12.90 acres as irrigated at the claimed place of use for claim 41S 134169-00. Mr. Ahlgren recommended the place of use be modified to 12.90 acres and the flow rate be reduced accordingly:

Flow Rate: 219.30 GPM 4.13 CFS
 Maximum Acres: 12.90 30.00

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	9.58 25.00		SE	33	18N	18E	FERGUS
2	3.32 5.00		E2NESW	33	18N	18E	FERGUS
Total:	30.00 12.90						

7. An Order was issued to determine if Claimants Jo Anne Roos and Shirley Brown agreed with the modifications proposed by Mr. Ahlgren. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agreed with the proposed modifications. The following language was included in the Order:

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

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 decreed 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 issue remarks decreed on claims 41S 134167-00 and 41S 134168-00 indicating the “maximum combined acres for this group of supplemental claims may require modification...” is not relevant because supplemental rights remarks on claims no longer include a quantified acreage figure.
4. The means of diversion issue remark decreed on claim 41S 134170-00 is a notice-type remark and has served its purpose. It can be removed.

RECOMMENDATIONS

1. The claims in this Case should be modified as follows:

Claims 41S 134167-00 and 41S 134168-00:

Flow Rate: 153.00 408.41 GPM

Maximum Acres: 9.00 24.00

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	5.00		E2E2SE	32	18N	18E	FERGUS
2	4.00 19.00		S2SW	33	18N	18E	FERGUS
Total:	24.00 9.00						

Claim 41S 134169-00:

Flow Rate: 219.30 GPM 4.13 CFS

Maximum Acres: 12.90 30.00

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	9.58 25.00			SE	33	18N	18E FERGUS
2	3.32 5.00		E2NESW	33	18N	18E	FERGUS
Total:	30.00	12.90					

Claim 41S 134170-00:

No proposed changes.

2. The issue remarks should be removed from the claims.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Jo Anne Roos
1353 Bad Route Rd
Terry, MT 59349-7314

Shirley L Brown
5373 Plum Creek Rd
Lewistown, MT 59457

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

Water Right Number: 41S 134167-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JO ANNE ROOS
1353 BAD ROUTE RD
TERRY, MT 59349-7314

Priority Date: JUNE 7, 1915

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 153.00 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 9.00

Source Name: LAST CHANCE 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		SWSESE	32	18N	18E	FERGUS

Period of Diversion: MARCH 15 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MARCH 15 TO NOVEMBER 1

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	5.00		E2E2SE	32	18N	18E	FERGUS
2	4.00		S2SW	33	18N	18E	FERGUS

Total: 9.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

134167-00 134168-00

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

Water Right Number: 41S 134168-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JO ANNE ROOS
1353 BAD ROUTE RD
TERRY, MT 59349-7314

Priority Date: FEBRUARY 22, 1900

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 153.00 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 9.00

Source Name: UNNAMED TRIBUTARY OF LAST CHANCE 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		SENESE	32	18N	18E	FERGUS

Period of Diversion: MARCH 5 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MARCH 5 TO OCTOBER 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	5.00		E2E2SE	32	18N	18E	FERGUS
2	4.00		S2SW	33	18N	18E	FERGUS

Total: 9.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

134167-00 134168-00

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

Water Right Number: 41S 134169-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

JO ANNE ROOS
1353 BAD ROUTE RD
TERRY, MT 59349-7314

Priority Date: APRIL 10, 1962

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 219.30 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 12.90

Source Name: UNNAMED TRIBUTARY OF LAST CHANCE 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		SWSENW	33	18N	18E	FERGUS

Period of Diversion: MARCH 15 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MARCH 15 TO OCTOBER 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	9.58		SE	33	18N	18E	FERGUS
2	3.32		E2NESW	33	18N	18E	FERGUS

Total: 12.90

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

Water Right Number: 41S 134170-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JO ANNE ROOS
1353 BAD ROUTE RD
TERRY, MT 59349-7314

Priority Date: OCTOBER 20, 1915

Type of Historical Right: USE

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 LAST CHANCE 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		SESESW	33	18N	18E	FERGUS

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

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESESW	33	18N	18E	FERGUS

Diversion to Reservoir: DIVERSION # 1

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			SESESW	33	18N	18E	FERGUS