

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: Breck Carpenter; Julie Carpenter

CASE 41S-0746-R-2024  
41S 19320-00  
41S 19323-00

**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. Breck Carpenter and Julie Carpenter (the Carpenters) are the record owners of claims 41S 19320-00 and 41S 19323-00.

2. Claims 41S 19320-00 and 41S 19323-00 were decreed with DNRC issue remarks:

**41S 19320-00:**

- 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.
- THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 09/29/1985 .

**41S 19323-00:**

- THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 09/29/1985 .

3. The Carpenters were ordered to meet with a DNRC employee to address the unresolved issue remarks.

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating she spoke with “the Claimant” over the phone on August 28, 2024. (Doc.<sup>13.00</sup>). Ms. Bluhm indicated she reviewed an aerial photo and the Fergus County Water Resources Survey field notes to prepare the Memorandum.

5. **Claim 41S 19320-00:** Ms. Bluhm confirmed the historical use of all claimed acres and recommended the place of use and flow rate issue remarks be removed from claim 41S 19320-00. Further, regarding the priority date, Ms. Bluhm stated:

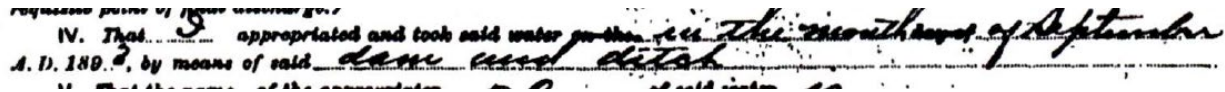
The priority date was claimed as September 1, 1893. According to the documentation in the claim file, the DNRC and claimant found the priority date to read as September 9, 1893.

Ms. Bluhm did not provide any evidence to substantiate a September 9, 1893 priority date.

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

Upon review of the scanned notice of appropriation in the claim file, it is evident that the notice indicates that water was appropriated “in the month of September A.D. 1893...”:



IV. That *S* appropriated and took said water on the *30th* day of *September* A. D. *1893*, by means of said *dam and ditch*

Therefore, the priority date for claim 41S 19320-00 should be September 30, 1893.

6. **Claim 41S 19323-00:** Claim 41S 19323-00 is based on the same notice of appropriation as claim 41S 19320-00 and should have the same priority date – September 30, 1893.

7. An Order was issued to determine if the Carpenters agreed or disagreed with the recommendations made by Ms. Bluhm. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Carpenters agreed with the proposed modifications. 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 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.

#### RECOMMENDATIONS

1. The priority dates for claims 41S 19320-00 and 41S 19323-00 should be modified to September 30, 1893.

2. The issue remarks should be removed from claims 41S 19320-00 and 41S 19323-00.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Breck Carpenter  
Julie Carpenter  
PO Box 426  
Denton, MT 59430-0426

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

**Water Right Number:** 41S 19320-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRECK CARPENTER  
PO BOX 426  
DENTON, MT 59430-0426

JULIE CARPENTER  
PO BOX 426  
DENTON, MT 59430-0426

**Priority Date:** SEPTEMBER 30, 1893

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 1.50 CFS

**\*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:** 60.00

**Source Name:** WOLF 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		SENWSW	15	18N	14E	FERGUS
<b>Period of Diversion:</b>	MAY 1 TO SEPTEMBER 30					
<b>Diversion Means:</b>	PUMP					
2		SWNESW	15	18N	14E	FERGUS
<b>Period of Diversion:</b>	MAY 1 TO SEPTEMBER 30					
<b>Diversion Means:</b>	PUMP					
3		NENESW	15	18N	14E	FERGUS
<b>Period of Diversion:</b>	MAY 1 TO SEPTEMBER 30					
<b>Diversion Means:</b>	PUMP					
4		SENWSE	15	18N	14E	FERGUS
<b>Period of Diversion:</b>	MAY 1 TO SEPTEMBER 30					
<b>Diversion Means:</b>	PUMP					
5		SENESE	15	18N	14E	FERGUS
<b>Period of Diversion:</b>	MAY 1 TO SEPTEMBER 30					
<b>Diversion Means:</b>	PUMP					

**Period of Use:** MAY 1 TO SEPTEMBER 30

**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	60.00		N2S2	15	18N	14E	FERGUS
<b>Total:</b>	60.00						

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**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.

19320-00

19323-00

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

**Water Right Number:** 41S 19323-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRECK CARPENTER  
PO BOX 426  
DENTON, MT 59430-0426

JULIE CARPENTER  
PO BOX 426  
DENTON, MT 59430-0426

**Priority Date:** SEPTEMBER 30, 1893

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** WOLF 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		N2S2	15	18N	14E	FERGUS

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			N2S2	15	18N	14E	FERGUS

**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.

19320-00

19323-00