

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

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CLAIMANTS: Brian K. Church; Robyn MH Church

**CASE 41S-0761-R-2024**  
41S 104292-00

**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. Brian K. Church and Robyn MH Church are the record owners of fish and wildlife claim 41S 104292-00.

2. Claim 41S 104292-00 was decreed with DNRC issue remarks:

- THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE IN THE NENESE SEC 35 TWP 16N RGE 19E FERGUS CO.
- 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.
- POINT OF DIVERSION AND RESERVOIR RECORD 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.
- CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 17 TIMES THE CAPACITY OF THE RESERVOIR.

3. Claim 41S 104292-00 was decreed with the following place of use:

**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			SWNESE	35	16N	19E	FERGUS

Based on the place of use issue remark, along with the record, it appears the following change to claim 41S 104292-00 is appropriate:

**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		NENESE	<del>SWNESE</del>	35	16N	19E	FERGUS

4. An Order was issued setting a deadline for Claimants Brian K. Church and Robyn MH Church to agree or disagree that the place of use should be modified.<sup>1</sup> The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Brian K. Church and Robyn MH Church agree that the place of use should be modified and a Master’s Report would be issued. The Order included the following language:

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<sup>1</sup> The September 3, 2024 Order Consolidating and Setting Filing Deadline included an error in the proposed legal land description for claim 41S 104292-00, it indicated that if nothing were filed by the deadline, the place of use would be modified to the NENENE of Section 35, the correct legal land description is the NENESE of Section 35.

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 by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

2. Under 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.

3. Claim 41S 104292-00 was also decreed with notice-type issue remarks indicating that if objections were not filed to the volume, period of diversion, point of diversion, or reservoir record, those elements (or portions of the claim) would remain unchanged. No objections were filed.

Another volume issue remark was decreed on claim 41S 104292-00 indicating the volume is excessive for the claimed fish and wildlife purpose. However, the notice-type volume issue remark indicates that no changes will be made to the volume element if no objections are filed. The volume of this claim is presumed to be non-consumptive and will remain unchanged.

RECOMMENDATIONS

1. The place of use for claim 41S 104292-00 should be modified to:

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		NENESE	SWNESE	35	16N	19E	FERGUS

2. The issue remarks should be removed from claim 41S 104292-00.

An abstract is attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Brian K. Church  
Robyn MH Church  
3660 E. 128th Pl  
Thornton, CO 80241-2138

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

**Water Right Number:** 41S 104292-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRIAN K CHURCH  
3660 E. 128TH PL  
THORNTON, CO 80241-2138

ROBYN MH CHURCH  
3660 E. 128TH PL  
THORNTON, CO 80241-2138

**Priority Date:** FEBRUARY 23, 1972

**Type of Historical Right:** FILED

**Purpose (Use):** FISH AND WILDLIFE

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

**\*Volume:** 40.30 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED, IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

**Source Name:** UNNAMED TRIBUTARY OF BOYD 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		NENESE	35	16N	19E	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>
	NENESE	35	16N	19E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 10.00 FEET

**Surface Area:** 0.60 ACRES

**Capacity:** 2.40 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			NENESE	35	16N	19E	FERGUS