

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: Deborah S. Hajenga Living Trust;
Don L. Hajenga Living Trust

CASE 41S-0949-R-2024
41S 105565-00
41S 30131291

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. Deborah S. Hajenga Living Trust and Don L. Hajenga Living Trust (the Hajenga Trusts) are the record owners of claims 41S 105565-00 and 41S 30131291.
2. Claims 41S 105565-00 and 41S 30131291 were decreed with DNRC issue remarks:

41S 105565-00:

- THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 25.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-165 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- 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.
- SOURCE NAME, POINT OF DIVERSION, MEANS 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.

41S 30131291:

- NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 3.62 ACRE-FEET PER YEAR.
- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

3. The Hajenga Trusts were ordered to meet with a DNRC employee to address the unresolved issue remarks.
4. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating the Hajenga Trusts failed to contact the DNRC. (Doc.¹ 4.00). Mr. Ahlgren indicated he reviewed scanned claim files to prepare the Memorandum. Proposed abstracts were attached to the Memorandum.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

5. **41S 105565-00:** Mr. Ahlgren indicated that he was unable to confirm historical irrigation for claim 4S 105565-00 and he recommended dismissal of the claim.

6. **41S 30131291:** Mr. Ahlgren stated that without additional information, the volume for claim 41S 30131291 should be the volume guideline – 3.62 acre-feet.

8. An Order was issued to determine if the Hajenga Trusts agreed or disagreed with the recommendations made by Mr. Ahlgren. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agreed with the recommended modifications, including dismissal of claim 41S 105565-00. 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 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 remark indicating that claim 41S 30131291 was not included in the Temporary Preliminary Decree is a notice-type remark. No objections were filed, and no further proceedings are necessary.

RECOMMENDATIONS

1. Claim 41S 105565-00 should be dismissed. The volume of claim 41S 30131291-00 should be 3.62 acre-feet.

2. The issue remarks should be removed from claim 41S 30131291.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Deborah S. Hajenga Living Trust
Don L. Hajenga Living Trust
3485 Last Chance Rd
Stanford, MT 59479-9566

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

Water Right Number: 41S 105565-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: HAJENGA, DEBORAH S LIVING TRUST
3485 LAST CHANCE RD
STANFORD, MT 59479-9566

HAJENGA, DON L LIVING TRUST
3485 LAST CHANCE RD
STANFORD, MT 59479-9566

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF BIG COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 30131291 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: HAJENGA, DEBORAH S LIVING TRUST
3485 LAST CHANCE RD
STANFORD, MT 59479-9566

Priority Date: APRIL 11, 1960

Type of Historical Right: USE

***Purpose (Use):** MULTIPLE DOMESTIC

Flow Rate: 10.00 GPM

Volume: 3.62 AC-FT

Households: 2

Maximum Acres: 0.25

Source Name: WELL

Source Type: GROUNDWATER

***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		SWSWNE	12	15N	13E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: BENCHLAND ORIGINAL TOWNSITE TRACT/LOT: 1-3 BLOCK: 3

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	0.25		NWSWNE	12	15N	13E	JUDITH BASIN

Subdivision: BENCHLAND ORIGINAL TOWNSITE TRACT/LOT: 1-3 BLOCK: 3

Total: 0.25