

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
09/24/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41S-0200-R-2024  
Block, Nathaniel  
6.00

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
JUDITH RIVER BASIN (41S)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Angus McMillan LLC; McMillan Trust

OBJECTOR: McMillan Trust

**CASE 41S-0200-R-2024**

41S 101569-00

41S 115282-00

41S 30106906

**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

The above-captioned claims appeared in the Preliminary Decree for the Judith River (Basin 41S) and were decreed with the following issue remark:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 101569-00, 41S 115282-00, 41S 30106906.

Claim 41S 115282-00 also received the following issue remark:

THE SOURCE NAME DOES NOT APPEAR TO BE STANDARDIZED. IT APPEARS THE SOURCE NAME SHOULD ACTUALLY BE SPRING, UNNAMED TRIBUTARY OF CROW COULEE.

Claim 41S 30106906 also received the following 'notice' type issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

All three claims were filed on the same Notice of Completion 'GW' form.

The McMillan Trust filed an objection to claim 41S 115282-00 seeking modifications to the priority date and source name.

The claims were consolidated into case 41S-0200-R-2024 on February 7, 2024, and a status conference was held on March 12, 2023. Claimant Angus McMillan LLC failed to appear.

## FINDINGS OF FACT

1. Evidence attached to the claim files for the claims supports usage of the water for stock since 1881.
2. Claimant McMillan Trust states that the source for claim 41S 115282-00 should be modified to 'Spring, Unnamed Tributary of Crow Coulee'.

## PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it

existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

### CONCLUSIONS OF LAW

1. Pursuant to the objection and evidence in the claim file, the priority date and source name for claim 41S 115282-00 should be modified as requested.
2. Because claims 41S 101569-00 and 41S 30106906 are based on the same underlying appropriation, the priority date of the claims should be modified to reflect the December 31, 1881 priority date. Additionally, the ‘Type of Historical Right’ should be modified to ‘Use’ as information in the claim file indicates that the right was perfected as a use right.
3. The Source Name for all claims should be standardized to ‘Spring, Unnamed Tributary of Crow Coulee’.

### RECOMMENDATIONS

1. The claims should be modified as follows:

<b>Priority Date:</b>	<del>DECEMBER 31, 1963</del>	<b>December 31, 1881</b>
<b>Type of Historical Right:</b>	<del>FILED</del>	<b>Use</b>
<b>*Source Name:</b>	SPRING, UNNAMED TRIBUTARY OF CROW <del>CREEK</del>	
<b>Source Type:</b>	GROUNDWATER	<b>Coulee</b>

2. The following remark should be added to the claims:

**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 OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES. THE COMBINED FLOW RATE OF THE CLAIMS IS LIMITED TO 15 GPM. 41S 101569-00, 41S 115282-00, 41S 30106906.**

3. These modifications resolve the issue remarks on the claims. The remark stating that claim 41S 30106906 was not included in the previous decree simply provided notice

that the claim was not in the previous decree and requires no proceedings or additional information to resolve.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Angus McMillan LLC  
2505 Cottonwood Cut-Off  
Lewistown, MT 59457

**Service via Electronic Mail:**

Ryan K. Mattick  
Cusick, Farve, Mattick & Michael, P.C.  
PO Box 1288  
Bozeman, MT 59771-1288  
(406) 587-5511  
[office@cmrlawmt.com](mailto:office@cmrlawmt.com)

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

**Water Right Number:** 41S 101569-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ANGUS MCMILLAN LLC  
2505 COTTONWOOD CUT-OFF  
LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1881

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 7.50 GPM

**\*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:** SPRING, UNNAMED TRIBUTARY OF CROW COULEE

**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		SENWSE	28	15N	17E	FERGUS

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

**Diversion Means:** FLOWING

**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			S2	28	15N	17E	FERGUS

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

101569-00      115282-00      30106906

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 OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES. THE COMBINED FLOW RATE OF THE CLAIMS IS LIMITED TO 15 GPM. 41S 101569-00, 41S 115282-00, 41S 30106906.

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

**Water Right Number:** 41S 115282-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCMILLAN TRUST  
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES  
1751 POWERLINE RD  
LEWISTOWN, MT 59457-3948

**Priority Date:** DECEMBER 31, 1881

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 15.00 GPM

**\*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:** SPRING, UNNAMED TRIBUTARY OF CROW COULEE

**Source Type:** GROUNDWATER  
ALSO KNOWN AS MCMILLAN SPRING

**\*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		SENWSE	28	15N	17E	FERGUS

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

**Diversion Means:** FLOWING

**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			SWNENW	28	15N	17E	FERGUS
2			SENWNW	28	15N	17E	FERGUS

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

101569-00      115282-00      30106906

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 OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES. THE COMBINED FLOW RATE OF THE CLAIMS IS LIMITED TO 15 GPM. 41S 101569-00, 41S 115282-00, 41S 30106906.

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

**Water Right Number:** 41S 30106906 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ANGUS MCMILLAN LLC  
2505 COTTONWOOD CUT-OFF  
LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1881

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 10.00 GPM

**\*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:** SPRING, UNNAMED TRIBUTARY OF CROW COULEE

**Source Type:** GROUNDWATER  
ALSO KNOWN AS MCMILLAN SPRING

**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		SENWSE	28	15N	17E	FERGUS

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

**Diversion Means:** DEVELOPED SPRING

**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			SENWSE	28	15N	17E	FERGUS

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

101569-00      115282-00      30106906

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 OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES. THE COMBINED FLOW RATE OF THE CLAIMS IS LIMITED TO 15 GPM. 41S 101569-00, 41S 115282-00, 41S 30106906.