

Montana Water Court  
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**FILED**  
09/20/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41S-0214-R-2024  
Block, Nathaniel  
6.00

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

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CLAIMANT: Burleighs Angus Ranch Inc.

**CASE 41S-0214-R-2024**  
41S 121210-00  
41S 30105849

**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) with issue remarks.

The claims were consolidated into Case 41S-0214-R-2024 on February 21, 2024, and the claimants were ordered to work with the Department of Natural Resources and Conservation (“DNRC”) to resolve the issue remarks on the claims. On June 26, 2024, a representative for the claimant contacted the Court and stated that they had not received the initial order requiring them to work with DNRC. On July 1, 2024, the Order Consolidating Case and Order Setting Deadlines Pursuant to Section 85-2-248(5), MCA was vacated and new deadlines were set. On August 22, 2024, a Memorandum (“Memo”) was filed (Doc.<sup>1</sup> 5.00). The Memo states that the claimant met with DNRC and provided a diary and photos to assist in resolving the issue remarks.

## FINDINGS OF FACT

1. Claim 41S 121210-00 was decreed with the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

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.

THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-212 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

RESERVOIR RECORD 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.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 11.8 TIMES THE CAPACITY OF THE RESERVOIR.

2. The Memo recommended reducing the volume to 15.03 AC-ft. The Memo further recommended that the ‘acres irrigated’, ‘flow rate’ and volume’ issue remarks be removed pursuant to accepting the recommendation to modify the volume of the claim.

3. Claim 41S 30105849 was decreed with the following issue remark:

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

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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.

## 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.

3. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, -231(2), MCA.

## CONCLUSION OF LAW

1. The DNRC recommendations should be adopted.

## RECOMMENDATIONS

1. Claim 41S 121210-00 should be modified as follows:

**Volume:** ~~71.00 AC-FT~~ **15.03 AC-FT**

2. Pursuant to the Memo, adoption of the volume recommendation resolves the substantive issue remarks on claim 41S 121210-00.

3. The remaining issue remark on claim 41S 121210-00 and the issue remark on 41S 30105849 are ‘notice’ type remarks that do not require proceedings to resolve and should be removed from the claims.

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:**

Burleighs Angus Ranch Inc.  
3691 Upper Spring Creek Road  
Lewistown, MT 59457

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

**Water Right Number:** 41S 121210-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BURLEIGHS ANGUS RANCH INC  
3691 UPPER SPRING CREEK RD  
LEWISTOWN, MT 59457

**Priority Date:** JANUARY 7, 1882

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

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

**Volume:** 15.03 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 20.00

**Source Name:** PIKE 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		SWNENW	28	15N	19E	FERGUS

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** PUMP

**\*Reservoir:** ONSTREAM **Reservoir Name:** PIKE CREEK RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNENW	28	15N	19E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 12.00 FEET

**Depth:** 9.00 FEET

**Surface Area:** 1.67 ACRES

**Capacity:** 6.01 ACRE-FEET

**Period of Use:** APRIL 15 TO OCTOBER 15

**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	20.00		N2NW	28	15N	19E	FERGUS

**Total:** 20.00

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

**Water Right Number:** 41S 30105849 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** BURLEIGHS ANGUS RANCH INC  
3691 UPPER SPRING CREEK RD  
LEWISTOWN, MT 59457

**Priority Date:** JANUARY 7, 1882

**Type of Historical Right:** USE

**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:** PIKE CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2SESE	21	15N	19E	FERGUS
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		N2N2	28	15N	19E	FERGUS
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		N2	29	15N	19E	FERGUS
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		S2SENE	30	15N	19E	FERGUS
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		N2SE	30	15N	19E	FERGUS
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		N2SESW	30	15N	19E	FERGUS
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	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			S2SESE	21	15N	19E	FERGUS
2			N2N2	28	15N	19E	FERGUS
3			N2	29	15N	19E	FERGUS
4			S2SENE	30	15N	19E	FERGUS
5			N2SE	30	15N	19E	FERGUS
6			N2SESW	30	15N	19E	FERGUS