

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

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

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CLAIMANTS: Jacquelynn R. Wichman; Jared M. Wichman

CASE 41S-0368-R-2024

41S 3096-00

41S 3098-00

**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**

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

Claim 41S 3096-00:

SOURCE NAME 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.

Claim 41S 3098-00:

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.

SOURCE NAME 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 claims were consolidated into Case 41S-0368-R-2024 on June 4, 2024, and the claimants were ordered to work with the Department of Natural Resources and Conservation to resolve the issue remarks on the claims. On July 9, 2024, a Memorandum (“Memo”) was filed (Doc.<sup>1</sup> 2.00). The Memo states that the claimants contacted DNRC but that no formal meeting took place.

### **FINDINGS OF FACT**

1. The Memo recommends removing the ‘acres irrigated’ and ‘flow rate’ issue remarks on claim 41S 3098-00 without modifications to the claim.
2. The remaining remarks are notice-type remarks which provide notice that an element was modified during DNRC review. The remarks state that if no objections were filed, the elements would remain as they appeared in the decree and the remarks would be removed.

### **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

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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.

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 issue remarks should be removed from the claims.

### **RECOMMENDATION**

1. Upon review the record in this case, the issue remarks should be removed from the claims. The claims should otherwise be decreed as they appeared in the Preliminary Decree.

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:**

Jacquelynn R. Wichman  
Jared M. Wichman  
2178 Truck BYP  
Lewistown, MT 59457

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

**Water Right Number:** 41S 3096-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JACQUELYNN R WICHMAN  
2178 TRUCK BYP  
LEWISTOWN, MT 59457  
  
JARED M WICHMAN  
2178 TRUCK BYP  
LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1952

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 75.00 GPM

**Volume:** 3.00 AC-FT

**Households:** 1

**Maximum Acres:** 2.00

**\*Source Name:** UNNAMED TRIBUTARY OF BIG SPRING 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		SESENE	17	15N	18E	FERGUS

**Period of Diversion:** APRIL 1 TO SEPTEMBER 30

**Diversion Means:** PUMP

**Period of Use:** APRIL 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	2.00		SESENE	17	15N	18E	FERGUS

**Total:** 2.00

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

**Water Right Number:** 41S 3098-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JACQUELYNN R WICHMAN  
2178 TRUCK BYP  
LEWISTOWN, MT 59457  
  
JARED M WICHMAN  
2178 TRUCK BYP  
LEWISTOWN, MT 59457

**Priority Date:** AUGUST 31, 1881

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 51.00 GPM

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 3.00

**\*Source Name:** UNNAMED TRIBUTARY OF BIG SPRING 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		NWNESE	17	15N	18E	FERGUS

**Period of Diversion:** APRIL 1 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 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	3.00		SENE	17	15N	18E	FERGUS

**Total:** 3.00