

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: Clinton E. Carr; Valerie S. Carr; Bruce J.  
Turner; Joyce A. Turner; Pamela R. Turner;  
Nathan W. Carr

NOTICE OF INTENT TO APPEAR: Montana Department of  
Fish Wildlife & Parks

**CASE 41S-0625-R-2024**

41S 5391-00

41S 5417-00

41S 13387-00

41S 150644-00

**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. The above-listed claims were decreed with issue remarks:

**Claims 41S 5391-00 and 41S 5417-00 (Clinton E. Carr and Valerie S. Carr):**

- 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 5391-00, 41S 5417-00, 41S 13387-00, 41S 150644-00 .

**Claim 41S 13387-00 (Bruce J. Turner, Joyce A. Turner, and Pamela R. Turner):**

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- 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 5391-00, 41S 5417-00, 41S 13387-00, 41S 150644-00 .
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY ( 1963 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

**Claim 41S 150644-00 (Clinton E. Carr, Valerie S. Carr, and Nathan W. Carr):**

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- 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 5391-00, 41S 5417-00, 41S 13387-00, 41S 150644-00. .
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY ( 1963 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-112 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. The Montana Department of Fish Wildlife & Parks (FWP) filed a Notice of Intent to Appear for claim 41S 13387-00.

3. On August 21, 2024, Clinton E. Carr, Nathan W. Carr, and Valerie S. Carr filed documentation addressing the issue remarks decreed on their claims in this Case. (Doc.<sup>1</sup>7.00). On August 21, 2024, Pamela R. Turner and Bruce A. Turner filed documentation addressing the issue remarks decreed on their claim in this Case; the filing

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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.

also indicated that FWP agrees with the proposed resolution. (Doc. 8.00). For this Master’s Report, the August 21, 2024 filings will be referred to as the “settlement documents.”

4. **Claim 41S 5417-00:** The settlement documents propose the following modification to the flow rate information remark, for claim 41S 5417-00:

**\*Flow Rate:** ~~A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.~~  
A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Claim 41S 5417-00 was decreed with volume issue remarks. The remarks provided notice that the claimed volume exceeds the capacity of the reservoir and provided parties an opportunity to object. The remarks indicated that if no party objected, the volume would remain as decreed. No objections were filed.

5. **Claim 41S 13387-00:** The settlement documents proposed the following modifications to claim 41S 13387-00:

**Flow Rate:** 1.70 CFS 2.60 CFS

**Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	13.00 25.00	S2NWNE	S2NWNE	6	14N	15E	JUDITH BASIN
2	57.00 60.00		S2NE	6	14N	15E	JUDITH BASIN
3	21.00 18.00		N2N2SE	6	14N	15E	JUDITH BASIN
<b>Total:</b>	<b>91.00</b>						

The Affidavit of Bruce J. Turner is attached to one of the August 21, 2024 filings and discusses his knowledge of his father’s irrigation practices at the place of use in the 1950s. (Doc. 8.00, Exhibit B). In an Affidavit, water rights consultant Scott Irvin confirms that the irrigation is supported by aerial images. (Doc. 8.00, Exhibit A).

6. **Claim 41S 150644-00:** The settlement documents proposed the following modifications to claim 41S 150644-00:

**Flow Rate:** 359.04 GPM 1.75 CFS

**Maximum Acres:** 44.10 70.00

**Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	70.00 37.60		S2NW	6	14N	15E	JUDITH BASIN
<b>Total:</b>	<b>6.50</b>		S2N2NW	6	14N	15E	JUDITH BASIN

According to the Carr's August 21, 2024 filing, Statement of Claim 41S 150644-00:

The Statement of Claim for Water Right 41S 150644-00 was filed by James (Jim) Ridgeway, on behalf of the Estate of Russell Ridgeway, on April 28, 1982. The Statement of Claim lists the point of diversion ("POD") as a headgate on an Unnamed Tributary of the Judith River in the SWSWNW, Sec. 6, Twp. 14N, Rge. 15E. The filing includes a hand-drawn map showing the POD as claimed. The headgate location is further confirmed by historical aerial imagery and the personal knowledge of Claimant Clinton E. Carr. Id., ¶ 7; Exh. B, Aff. of Clinton Carr, ¶ 19. The foregoing evidence supports the prima facie status of the Statement of Claim and resolves the POD issue remark. Accordingly, the POD should remain as it appears in the Preliminary Decree.

(Doc. 7.00).

Consultant Scott Irvin speculates that during the 1997 examination of claim 41S 150655-00, the DNRC misclassified the ditch system, resulting in the DNRC noting that no ditch system was visible. (Doc. 7.00, Exhibit A.). Using a 1965 aerial image, Mr. Irvin identified 44.10 irrigated acres described by claim 41S 150644-00.

7. The over-filed notice of appropriation issue remark, common to all the claims in this Case, will be resolved if the flow rates for claims 41S 13387-00 and 41S 150644-00 are reduced as proposed by the settlement documents.

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim as well as any objections received. Sections 85-2-233, 85-2-247, and 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.

4. Remarks were decreed on some claims in this Case indicating the supplemental information remarks should be modified because of the places of use being modified. Ultimately, supplemental rights remarks will be removed from claims in final decree, and the Court is no longer modifying supplemental rights remarks

5. The point of diversion issue remark decreed on claim 41S 5417-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

#### RECOMMENDATIONS

1. Claims 41S 5391-00, 41S 5417-00, 41S 13387-00, and 41S 150644-00 should be modified as described in the Findings of Facts.

2. The issue remarks should be removed from claims 41S 5391-00, 41S 5417-00, 41S 13387-00, and 41S 150644-00.

Abstracts are served with the Report for review.

#### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service Via Electronic Mail:**

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

**Water Right Number:** 41S 5417-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CLINTON E CARR  
PO BOX 184  
HOBSON, MT 59452-0184

VALERIE S CARR  
PO BOX 184  
HOBSON, MT 59452-0184

**Priority Date:** AUGUST 1, 1908

**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. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** 1,810.00 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 JUDITH RIVER

**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		NWSWNW	6	14N	15E	JUDITH BASIN

**\*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>
	NWSWNW	6	14N	15E	JUDITH BASIN

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 10.00 FEET

**Surface Area:** 0.75 ACRES

**Capacity:** 3.00 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			NWSWNW	6	14N	15E	JUDITH BASIN

**Remarks:**

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 (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

5391-00

5417-00

150644-00



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

**Water Right Number:** 41S 13387-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRUCE J TURNER  
PO BOX 332  
HOBSON, MT 59452-0332

PAMELA R TURNER  
PO BOX 370  
HOBSON, MT 59452

**Priority Date:** AUGUST 1, 1908

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 1.70 CFS

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

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 91.00

**Source Name:** UNNAMED TRIBUTARY OF JUDITH RIVER

**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		NWSWNE	6	14N	15E	JUDITH BASIN

**Period of Diversion:** APRIL 15 TO OCTOBER 1

**Diversion Means:** PUMP

**Period of Use:** APRIL 15 TO OCTOBER 1

**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	13.00		S2NWNE	6	14N	15E	JUDITH BASIN
2	57.00		S2NE	6	14N	15E	JUDITH BASIN
3	21.00		N2N2SE	6	14N	15E	JUDITH BASIN

**Total:** 91.00

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

13387-00

13429-00

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

**Water Right Number:** 41S 150644-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** CLINTON E CARR  
PO BOX 184  
HOBSON, MT 59452-0184  
  
NATHAN W CARR  
PO BOX 206  
HOBSON, MT 59452-0206  
  
VALERIE S CARR  
PO BOX 184  
HOBSON, MT 59452-0184

**Priority Date:** AUGUST 1, 1908

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 359.04 GPM

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

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 44.10

**Source Name:** UNNAMED TRIBUTARY OF JUDITH RIVER

**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		SWSWNW	6	14N	15E	JUDITH BASIN

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO OCTOBER 1

**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	37.60		S2NW	6	14N	15E	JUDITH BASIN
2	6.50		S2N2NW	6	14N	15E	JUDITH BASIN

**Total:** 44.10

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

150629-00	150630-00	150631-00	150636-00	150637-00	150638-00
150644-00	150650-00				

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 (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

5391-00	5417-00	150644-00
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