

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: Janelle L. Burgum; Raymond A. Luther

CASE 41S-0683-R-2024

41S 101857-00

41S 101858-00

41S 101859-00

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. Janelle L. Bergum and Raymond A. Luther (Claimants) are the record co-owners of claim 41S 101857-00. Bergum is the record owner of claims 41S 101858-00, and 41S 101859-00.

2. Claims 41S 101857-00, 41S 101858-00, and 41S 101859-00 were decreed with DNRC issue remarks:

41S 101857-00:

- USDA AERIAL PHOTOGRAPH NOS. 30027-278-74 AND 30027-278-76 , DATED 09/25/1979 , APPEAR TO INDICATE 60.60 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

41S 101858-00:

- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-4 , DATED 09/25/1979 , APPEARS TO INDICATE 30.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE POINTS OF DIVERSION MAY BE INCORRECT. THE LOCATIONS OF THE HEADGATES CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- 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.

41S 101859-00:

- THE MEANS OF DIVERSION DOES NOT APPEAR TO BE STANDARDIZED. THE MEANS OF DIVERSION FOR POINT OF DIVERSION NO. 1 APPEARS TO BE A DAM.
- IT APPEARS THE RESERVOIR ASSOCIATED WITH THE ORIGINAL APPROPRIATION MAY NO LONGER BE USED FOR THIS RIGHT.
- THE SOURCE NAME DOES NOT APPEAR TO BE STANDARDIZED. IT APPEARS THE SOURCE NAME SHOULD ACTUALLY BE SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 73.9 TIMES THE CAPACITY OF THE RESERVOIR.
- 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.
- 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.

3. The Claimants were ordered to meet with the DNRC to address the unresolved issue remarks decreed on the claims.

4. On July 22, 2024, DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating she met with the Claimants on June 25, 2024. (Doc.* 2.00). Ms. Bluhm indicated she reviewed scanned claim files, aerial photos, and the Fergus County and Judith Basin County Water Resources Surveys to prepare the Memorandum. Maps and proposed abstracts were included with the Memorandum.

5. **Claim 41S 101857-00:** To address the issue remark and historical use of claim 41S 101857-00, Ms. Bluhm recommended claim 41S 101857-00 be reduced to 97.00 acres, as follows:

Maximum Acres:	97.00	200.00						
Place of Use:								
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	80.00	150.00	S2	35	12N	16E	FERGUS	
2	17.00	50.00	N2	2	11N	16E	FERGUS	
Total:	97.00	200.00						

6. **Claim 41S 101858-00:** Ms. Bluhm reported that the 1970 aerial photograph did not show irrigation at the claimed place of use and “The claimant explained they have no memory of irrigation present on this claimed land.” Ms. Bluhm recommended claim 41S 101858-00 be dismissed.

7. **Claim 41S 101859-00:** Ms. Bluhm recommended the following modifications be made to claim 41S 101859-00, addressing the unresolved issue remarks:

* “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

Volume: 8.56 81.70 AC-FT

Source Name: UNNAMED TRIBUTARY OF MEADOW CREEK SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK

Source Type: SURFACE WATER

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		N2SE	35	12N	16E	FERGUS
Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK						
*Period of Diversion: MAY 1 TO OCTOBER 31						
Diversion Means: FLOWING DAM						
2		SWSWN E	35	12N	16E	FERGUS
Source Name: UNNAMED TRIBUTARY OF MEADOW CREEK SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK						
*Period of Diversion: MAY 1 TO OCTOBER 31						
Diversion Means: FLOWING						
3		S2SE NW	35	12N	16E	FERGUS
Source Name: UNNAMED TRIBUTARY OF MEADOW CREEK SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK						
*Period of Diversion: MAY 1 TO OCTOBER 31						
Diversion Means: FLOWING						
4		NESW	35	12N	16E	FERGUS
Source Name: UNNAMED TRIBUTARY OF MEADOW CREEK SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK						
*Period of Diversion: MAY 1 TO OCTOBER 31						
Diversion Means: FLOWING						

8. An Order was issued setting a deadline for Claimants Raymond A. Luther and Janelle L. Bergum to file statements agreeing or disagreeing with the proposed modifications to the claims in this Case. The Order also set a deadline for Claimant Janelle L. Bergum file a statement agreeing or disagreeing the claims be modified as recommended by Ms. Bluhm. The Order indicated that if nothing were filed by the deadline this Water Master would conclude the Claimants agree the claims should be modified as described. 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 period of diversion and reservoir record issue remarks decreed on claim 41S 101859-00 are notice-type remarks. No objections were filed, and no further proceedings are required.

RECOMMENDATIONS

1. Claim 41S 101857-00 should be modified as follows:

Maximum Acres: 97.00 ~~200.00~~

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	80.00 150.00		S2	35	12N	16E	FERGUS
2	17.00 60.00		N2	2	11N	16E	FERGUS
Total:	200.00	97.00					

Claim 41S 101858-00 should be dismissed. And claim 41S 101859-00 should be modified as follows:

Volume: 8.56 ~~81.70~~ AC-FT

Source Name: ~~UNNAMED TRIBUTARY OF MEADOW CREEK~~ SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK

Source Type: SURFACE WATER

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		N2SE	35	12N	16E	FERGUS
Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK						
*Period of Diversion: MAY 1 TO OCTOBER 31						
Diversion Means: FLOWING DAM						
2		SWSWN	35	12N	16E	FERGUS
Source Name: UNNAMED TRIBUTARY OF MEADOW CREEK SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK						
*Period of Diversion: MAY 1 TO OCTOBER 31						
Diversion Means: FLOWING						
3		S2SENW	35	12N	16E	FERGUS
Source Name: UNNAMED TRIBUTARY OF MEADOW CREEK SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK						
*Period of Diversion: MAY 1 TO OCTOBER 31						
Diversion Means: FLOWING						
4		NESW	35	12N	16E	FERGUS
Source Name: UNNAMED TRIBUTARY OF MEADOW CREEK SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK						
*Period of Diversion: MAY 1 TO OCTOBER 31						
Diversion Means: FLOWING						

2. The issue remarks should be removed from claims 41S 101857-00 and 41S 101859-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Raymond A. Luther
PO Box 166
Garneill, MT 59445

Janelle L. Bergum
PO Box 97
Garneill, MT 59445

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

Water Right Number: 41S 101857-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: JANELLE L BERGUM
PO BOX 97
GARNEILL, MT 59445

RAYMOND A LUTHER
PO BOX 166
GARNEILL, MT 59445

Priority Date: JUNE 15, 1892

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

Volume: 380.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 97.00

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW CREEK

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		S2	35	12N	16E	FERGUS

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: FLOWING

2		N2	2	11N	16E	FERGUS
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Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: FLOWING

Period of Use: MAY 1 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	80.00		S2	35	12N	16E	FERGUS
2	17.00		N2	2	11N	16E	FERGUS

Total: 97.00

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

Water Right Number: 41S 101858-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: JANELLE L BERGUM
PO BOX 97
GARNEILL, MT 59445

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF ROSS FORK CREEK

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 101859-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: JANELLE L BERGUM
PO BOX 97
GARNEILL, MT 59445

Priority Date: JUNE 15, 1892

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

Volume: 8.56 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 43.00

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF MEADOW 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		N2SE	35	12N	16E	FERGUS
*Period of Diversion:		MAY 1 TO OCTOBER 31				
Diversion Means:		DAM				
2		SWSWNE	35	12N	16E	FERGUS
*Period of Diversion:		MAY 1 TO OCTOBER 31				
Diversion Means:		FLOWING				
3		S2SENE	35	12N	16E	FERGUS
*Period of Diversion:		MAY 1 TO OCTOBER 31				
Diversion Means:		FLOWING				
4		NESW	35	12N	16E	FERGUS
*Period of Diversion:		MAY 1 TO OCTOBER 31				
Diversion Means:		FLOWING				

***Reservoir:** ONSTREAM **Reservoir Name:** SAM'S DAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENESE	35	12N	16E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 1.02 ACRES

Capacity: 3.26 ACRE-FEET

THE DAM EXTENDS INTO THE SESENE , SEC 35 TWP 12N RGE 16E FERGUS COUNTY.

Period of Use: MAY 1 TO OCTOBER 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	25.00		N2SE	35	12N	16E	FERGUS
2	3.00		SWSWNE	35	12N	16E	FERGUS
3	5.00		S2SENW	35	12N	16E	FERGUS
4	10.00		NESW	35	12N	16E	FERGUS
Total:	<u>43.00</u>						