

Montana Water Court
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FILED
04/04/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0015-R-2024
Block, Nathaniel
12.00

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

CLAIMANTS: Gary E. Boyce; Marietta J. Boyce

CASE 41S-0015-R-2024

41S 101814-00

41S 117532-00

OBJECTOR: United States Bureau of Land Management

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 received objections from the United States of America (Bureau of Land Management) ("United States").

The claims were decreed with the following issue remarks:

41S 101814-00:

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

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 353.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 246.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-32 , DATED 09/25/1979 , APPEARS TO INDICATE 258.40 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41S 117532-00:

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

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 120.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 52.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-32 , DATED 09/25/1979 , APPEARS TO INDICATE 52.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

The claims were consolidated into Case 41S-0015-R-2024 on February 15, 2024.

On October 1, 2024, a Stipulation was filed (Doc.¹ 11.00).

FINDINGS OF FACT

1. The Stipulation proposes modifying claim 41S 101814-00 as follows:

Maximum Acres: ~~293.00~~ **261.40**

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

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 65.00		NE	31	21N	17E	FERGUS
2	80.00 70.40		E2W2	30	21N	17E	FERGUS
3	65.00		SW	19	21N	17E	FERGUS
4	18.00		W2SE	19	21N	17E	FERGUS
5	45.00 38.00		SE	30	21N	17E	FERGUS
6	5.00		NENENW	31	21N	17E	FERGUS
Total:	293.00 261.40						

The place of use is limited to private land.

2. The Stipulation proposes modifying claim 41S 117532-00 as follows:

Maximum Acres: ~~70.00~~ 52.00

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 5.00	SWSWNE S2N2		31	21N	17E	FERGUS
2	45.00 10.00	NWSW S2		31	21N	17E	FERGUS
3		13.00	SENW	31	21N	17E	Fergus
4		24.00	NESW	31	21N	17E	Fergus
Total:	70.00 52.00						

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 is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

4. Where a claimant agrees to reduce or limit an element of a claim, “the water court does not need to determine whether the burden of proof has been met.” Rule 17(c), W.R.Adj.R. The Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R.

CONCLUSION OF LAW

1. The modifications proposed in the Stipulation should be accepted and the claims modified accordingly.

2. Modification of the claims pursuant to the Stipulation resolves both the objections to the claims and the issue remarks on the claims, which should be removed.

RECOMMENDATION

1. Upon review the record in this case, the claims should be modified as described above. The objections to the claims should be resolved and should be dismissed.

2. The issue remarks should be considered resolved and 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.

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

Water Right Number: 41S 101814-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GARY E BOYCE
329 POPNOE LN
WINIFRED, MT 59489

MARIETTA J BOYCE
329 POPNOE LN
WINIFRED, MT 59489

Priority Date: APRIL 30, 1944

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 10.00 CFS

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

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 261.40

Source Name: 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		SESESE	31	21N	17E	FERGUS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 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	65.00		NE	31	21N	17E	FERGUS
2	70.40		E2W2	30	21N	17E	FERGUS
3	65.00		SW	19	21N	17E	FERGUS
4	18.00		W2SE	19	21N	17E	FERGUS
5	38.00		SE	30	21N	17E	FERGUS
6	5.00		NENENW	31	21N	17E	FERGUS

Total: 261.40

THE PLACE OF USE IS LIMITED TO PRIVATE LAND

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.

101814-00	115304-00	117529-00	117530-00
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 117532-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GARY E BOYCE
329 POPNOE LN
WINIFRED, MT 59489

MARIETTA J BOYCE
329 POPNOE LN
WINIFRED, MT 59489

Priority Date: MAY 1, 1902

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.65 CFS

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

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 52.00

Source Name: 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		SESESE	31	21N	17E	FERGUS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 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	5.00		SWSWNE	31	21N	17E	FERGUS
2	10.00		NWSW	31	21N	17E	FERGUS
3	13.00		SENW	31	21N	17E	FERGUS
4	24.00		NESW	31	21N	17E	FERGUS

Total: 52.00