

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

FILED
04/04/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0421-R-2024
Block, Nathaniel
4.00

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

CLAIMANT: Thelma J. Walker Trust

CASE 41S-0421-R-2024

41S 104241-00

41S 104242-00

NOTICE OF INTENT TO APPEAR: ~~Montana Fish, Wildlife
& Parks~~

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:

41S 104241-00:

POINT OF DIVERSION 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 104242-00:

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

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

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

The Montana Department of Fish, Wildlife & Parks ("FWP") filed a Notice of Intent to Appear for claim 41S 104242-00.

The claims were consolidated into Case 41S-0421-R-2024 on September 13, 2024, and on October 28, 2024, the FWP filed a Withdrawal of Notice of Intent to Appear ("Notice") (Doc.¹ 3.00). Attached to the Notice was the Declaration of Andrew Brummond ("Declaration").

FINDINGS OF FACT

1. Pursuant to the Declaration Andrew Brummond confirmed that there was historic irrigation on the place of use.
2. Pursuant to the Notice FWP's NOIA should be dismissed.

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

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

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 issue remark questioning the irrigated acreage of claim 41S 104242-00 should be removed from the claim as FWP provided evidence of historic irrigation.

2. The remaining issue remarks should be removed from the claims as they do not require additional information or proceedings to resolve.

RECOMMENDATION

1. Upon review of the record in this case, the issue remarks should be removed from the claims as discussed above.

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:

Thelma J. Walker Trust
% Trustee
3201 Lime Kiln Road
Lewistown, MT 59457

Service via Electronic Mail:

Last Order:

Alexander R. Scolavino III
Montana Department of Fish Wildlife & Parks
PO Box 200701
Helena, MT 59620
(406) 444-3308
Alexander.scolavino@mt.gov
Audrey.Kelly@Mt.gov

Note: Caption and Service List Updated 4-1-2025

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41S PD\Cases\421\NB 41S-0421-R-2024 MR - Resolution of IRs 248 (NEW, multi claim, no modifications, remove issue remarks) 3-24-2025 rr.docx

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

Water Right Number: 41S 104241-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: WALKER, THELMA J TRUST
% TRUSTEE
3201 LIME KILN RD
LEWISTOWN, MT 59457

Priority Date: MAY 15, 1893

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 372.50 GPM

Volume: 67.00 AC-FT

Climatic Area: 3 - MODERATE

*Maximum Acres: 17.80

Source Name: COAL BANK COULEE

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	17	14N	13E	JUDITH BASIN
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: HEADGATE						
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	17.80		SENW	17	14N	13E	JUDITH BASIN
Total:		17.80					

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.

104241-00 104242-00 113146-00

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

Water Right Number: 41S 104242-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: WALKER, THELMA J TRUST
% TRUSTEE
3201 LIME KILN RD
LEWISTOWN, MT 59457

Priority Date: MARCH 1, 1881

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.13 CFS

Volume: 348.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 107.40

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		NENNW	36	14N	12E	JUDITH BASIN

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	101.10			17	14N	13E	JUDITH BASIN
2	6.30		NENW	20	14N	13E	JUDITH BASIN
Total:	107.40						

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.

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