

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

FILED
08/01/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0530-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: Angus McMillan LLC; McMillan Trust; Dale
K. Best

OBJECTORS: Michael P. Weinheimer; McMillan Trust

CASE 41S-0530-R-2024

41S 101556-00

41S 101558-00

41S 115270-00

41S 115272-00

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 101556-00:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 500 MINER'S INCHES DECREED IN CASE NO. 92 , FERGUS COUNTY. 41S 101556-00, 41S 115270-00, 41S 115272-00.

Claim 41S 101558-00:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 51.00 GPM PER ACRE.

ON NOVEMBER 2, 1988 DON D. CONNER FILED A LATE OBJECTION TO THE OWNERSHIP OF THIS RIGHT. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

Claim 41S 115270-00:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 500 MINER'S INCHES DECREED IN CASE NO. 92 , FERGUS COUNTY. 41S 101556-00, 41S 115270-00, 41S 115272-00.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 99.00 GPM PER ACRE.

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41S 115270-00, 41S 115272-00.

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.

Claim 41S 115272-00:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 500 MINER'S INCHES DECREED IN CASE NO. 92 , FERGUS COUNTY. 41S 101556-00, 41S 115270-00, 41S 115272-00.

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41S 115270-00, 41S 115272 00.

DITCH NAME, MEANS OF DIVERSION, AND POINT OF DIVERSION WERE 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.

Michael P. Weinheimer filed objections to claims 41S 101556-00, 41S 101558-00, and 41S 115270-00. The claims were consolidated into Case 41S-0530-R-2024 on February 7, 2024 and on December 27, 2024, a Stipulation was filed (Doc.¹ 11.00).

FINDINGS OF FACT

1. The Stipulation seeks to add the following remark to each of the above-captioned claims:

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

“THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME FORMERLY DECREED RIGHT ALLOCATING A CUMULATIVE FLOW RATE AMONG ALL PURPOSES OF 500 MINER’S INCHES. 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 ACCORDANCE WITH HISTORICAL PRACTICES.

41S 101556-00, 41S 101558-00, 41S 115270-00, 41S 115272-00”

2. The following remark should be placed on the claims for clarification purposes:

“THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE LIMITED TO A COMBINED FLOW RATE OF 500 MINER’S INCHES:

41S 101556-00, 41S 101558-00, 41S 115270-00, 41S 115272-00”

3. Pursuant to a Memo from the State of Montana Department of Natural Resources and Conservation (“DNRC”) in the claim file for claim 41S 101558-00 dated October 17, 2005 it appears that the claimants predecessor in interest Lester McMillan purchased property from late objector to the claim Don Conner. It appears that this purchase resolves the underlying objection to ownership. Mr. Conner should file an objection to this Master’s Report if he wishes to pursue the late objection.

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 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.
4. Pursuant to § 3-7-224, MCA the Water Court is directed to conduct hearings in the

same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents (including objections) filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the Statement are supported by evidence.

5. Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees, Case 42B-1, ¶ 3 at p. 14, (Order Denying Motion June 27, 2014). Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claims.

CONCLUSIONS OF LAW

1. The remark described in Finding of Fact #1 resolves the remarks discussing flow rate on claims 41S 101556-00, 41S 101558-00, 41S 115270-00, and 41S 115272-00.

2. It appears that the late objection issue remark was resolved when the property appurtenant to the claim was purchased by the predecessors in interest for claim 41S 101558-00.

3. The remaining remarks are notice-type remarks which provide notice that an element was modified during DNRC review. No additional information or proceedings are required to resolve the remarks and they should be removed.

RECOMMENDATIONS

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

2. Modification of the claims should resolve the objections.

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:

Angus McMillan LLC
2505 Cottonwood Cut-Off
Lewistown, MT 59457

Michael P. Weinheimer
5219 Evening Shadow Lane
Billings, MT 59106

Dale K. Best (*deceased*)
~~1110 W. Spring St.~~
~~Lewistown, MT 59457~~
(*Undeliverable*)

Interested Party:

Don D. Conner
PO Box 132
Three Forks, MT 59752

Service via Electronic Mail:

Ryan K. Mattick
Mattick Law Firm
ryan@matticklawfirm.com
(Attorney for McMillan Trust)

Note: Service List Updated 8-1-2025

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41S\41S PD\Cases\530\NB 41S-0530-R-2024 MR - Resolution of IRs 248 (NEW, multiple claims, DE, stip, other paper, remove issue remarks) 8-1-2025 rr.docx

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

Water Right Number: 41S 101556-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: ANGUS MCMILLAN LLC
2505 COTTONWOOD CUT-OFF
LEWISTOWN, MT 59457

Priority Date: MAY 31, 1881

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 12.50 CFS

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE LIMITED TO A TOTAL
COMBINED FLOW RATE OF 500 MINER’S INCHES:
41S 101556-00, 41S 101558-00, 41S 115270-00, 41S 115272-00

***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: 222.00

Source Name: COTTONWOOD 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		SWSENW	1	14N	17E	FERGUS

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	80.00		E2NE	28	15N	17E	FERGUS
2	80.00		S2NW	27	15N	17E	FERGUS
3	30.00		SE	27	15N	17E	FERGUS
4	32.00		SW	27	15N	17E	FERGUS
Total:		222.00					

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.

101556-00101558-00115270-00115272-00

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

Water Right Number: 41S 101558-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DALE K BEST
-
LEWISTOWN, MT 59457

ANGUS MCMILLAN LLC
2505 COTTONWOOD CUT-OFF
LEWISTOWN, MT 59457

Priority Date: MAY 31, 1881

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 12.50 CFS

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE LIMITED TO A TOTAL
COMBINED FLOW RATE OF 500 MINER'S INCHES:
41S 101556-00, 41S 101558-00, 41S 115270-00, 41S 115272-00

***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: 110.00

Source Name: COTTONWOOD 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		SWSNW	1	14N	17E	FERGUS

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	28.00		N2SW	35	15N	17E	FERGUS
2	48.00		W2NW	35	15N	17E	FERGUS
3	34.00		E2NE	34	15N	17E	FERGUS

Total: 110.00

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.

101556-00	101558-00	115270-00	115272-00
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S

Water Right Number: 41S 115270-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MCMILLAN TRUST
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES
1751 POWERLINE RD
LEWISTOWN, MT 59457-3948

Priority Date: MAY 31, 1881

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 12.50 CFS

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE LIMITED TO A TOTAL
COMBINED FLOW RATE OF 500 MINER'S INCHES:
41S 101556-00, 41S 101558-00, 41S 115270-00, 41S 115272-00

*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: 56.70

Source Name: COTTONWOOD 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		SWSNW	1	14N	17E	FERGUS

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 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	7.70		NENW	27	15N	17E	FERGUS
2	38.00		NWNE	28	15N	17E	FERGUS
3	11.00		NENW	28	15N	17E	FERGUS

Total: 56.70

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.

101556-00 101558-00 115270-00 115272-00

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

Water Right Number: 41S 115272-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MCMILLAN TRUST
MCMILLAN THOMAS F & VIRGINIA M TRUSTEES
1751 POWERLINE RD
LEWISTOWN, MT 59457-3948

Priority Date: MAY 31, 1881

Type of Historical Right: DECREED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE LIMITED TO A TOTAL COMBINED FLOW RATE OF 500 MINER'S INCHES:

41S 101556-00, 41S 101558-00, 41S 115270-00, 41S 115272-00

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: COTTONWOOD 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		SWSNW	1	14N	17E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: MCMILLIAN DITCH

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			SESW	35	15N	17E	FERGUS

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.

101556-00 101558-00 115270-00 115272-00