

Montana Water Court
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MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER
BASIN 41S
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Jami Sisty; Mark Sisty

CASE 41S-0478-R-2025
41S 126234-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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

Claim 41S 126234-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) issued on August 18, 2022. The claim is owned by Mark and Jami Sisty. The claim received issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. Claim 41S 126234-00 was decreed as a flood irrigation claim with a flow rate of 85.00 GPM and a point of diversion in the SESENW of Section 9, Township 15N, Range 18E, for use on 5.00 acres in the S2SENW of Section 9, Township 15N, Range 18E. The claim received the following flow rate, point of diversion, and acres irrigated issue remarks:

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

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30027-178-55 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. On January 3, 2025, the Court consolidated the claim and ordered Claimants to work with the DNRC to resolve the issue remarks on the claim. (Doc.¹ 1.00).

3. On April 7, 2025, DNRC Water Resources Specialist Brandon Ahlgren filed a memorandum in this matter. (Doc. 3.00). Claimants met with the DNRC to discuss this matter and support the findings in the memorandum.

4. Using an aerial photograph from 1968 from "historicaerials.com," Mr. Ahlgren was able to substantiate all 5.00 claimed acres of irrigation. Because all of the claimed acreage was identified, the flow rate does not require modification.

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

5. Using the photograph above and through discussion with Claimants, the location of the pump was identified, so the point of diversion does not require modification.

6. The claim received the following notice type issue remark:

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.

7. The issue remark identifies an element modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remark indicates that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remark will be removed. No objections were 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 acres irrigated issue remark on claim 41S 126234-00 does not overcome the *prima facie* status of the claim. Evidence in the DNRC Memorandum supports the claimed maximum acres and place of use.

4. The flow rate issue remark on claim 41S 126234-00 does not overcome the *prima facie* status of the claim. Evidence in the DNRC Memorandum supports the claimed flow rate.

5. The point of diversion issue remark on claim 41S 126234-00 does not overcome the *prima facie* status of the claim. Evidence in the DNRC Memorandum supports the claimed location of the pump.

RECOMMENDATION

1. The issue remarks should be removed from the claim abstract.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Jami Sisty
Mark Sisty
804 Cheadle Street
Lewistown, MT 59457

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

Water Right Number: **41S 126234-00 STATEMENT OF CLAIM**

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
JAMI SISTY
804 CHEADLE ST
LEWISTOWN, MT 59457

MARK SISTY
804 CHEADLE ST
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1953

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 85.00 GPM

***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: 5.00

***Source Name:** UNNAMED TRIBUTARY OF BIG SPRING CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS BUTTERMILK CREEK

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		SESENW	9	15N	18E	FERGUS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: PUMP

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		S2SENW	9	15N	18E	FERGUS
Total:	5.00						