

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: ~~Shirley F. Balster; Steven W. Balster;~~
Thomas C. Carter

CASE 41S-0653-R-2024
41S 142261-00

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, conclusion 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. Thomas C. Carter (the Claimant) is the present-record-owner of irrigation claim 41S 142261-00. The DNRC updated the ownership of claim 41S 142261-00, removing Shirley F. Balster and Steven W. Balster as co-owners; the caption and service list have been updated to reflect the ownership of the claim. Claim 41S 142261-00 was decreed with DNRC 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.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 3.28 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.

2. The Claimant was ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claim 41S 142261-00.

3. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on December 27, 2024. (Doc.¹ 3.00). The Memorandum indicated Ms. Bluhm met with the Claimant on November 13, 2024. Ms. Bluhm reported she reviewed the Fergus County Water Resources Survey and an aerial photograph to prepare the Memorandum. Ms. Bluhm reported that she identified all 6.50 acres claimed. Additionally, Ms. Bluhm stated:

The volume was claimed to be 29.90 AC-ft. The DNRC investigated the claimed reservoir and concluded the holding capacity for this reservoir is estimated to be 9.11 AC-ft. Following the DNRC's guideline of 2.5 fills per year, the DNRC estimated the capacity to be 22.78 AC-FT.

Ms. Bluhm indicated the Claimant agreed with the recommended volume reduction; however, Ms. Bluhm did not acquire written agreement from the Claimant.

4. An Order was issued to determine if Claimants agreed or disagreed that the

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

volume for claim 41S 142261-00 should be reduced from 29.90 acre-feet to 22.78 acre-feet. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimant agreed with the proposed volume reduction and a Master's Report would be issued recommending the volume be reduced. Nothing was filed by the deadline.

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. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.
4. The period of diversion and reservoir record issue remarks decreed on claim 41S 142261-00-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The volume for claim 41S 142261-00 should be reduced from 29.90 acre-feet to 22.78 acre-feet.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Thomas C. Carter
54 Thomas Ln
Lewistown, MT 59457

Shirley F. Balster
Steven W. Balster
3645 US 191 N
Lewistown, MT 59457
(Last Order)

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

Water Right Number: 41S 142261-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: THOMAS C CARTER
54 THOMAS LN
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1915

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 22.78 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 6.50

Source Name: UNNAMED TRIBUTARY OF BURNETTE 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		NENENE	33	16N	18E	FERGUS

***Period of Diversion:** APRIL 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

***Reservoir:** ONSTREAM **Reservoir Name:** HOUSE POND

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENENE	33	16N	18E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 12.00 FEET

Depth: 9.00 FEET

Surface Area: 2.53 ACRES

Capacity: 9.11 ACRE-FEET

Period of Use: APRIL 15 TO SEPTEMBER 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	6.50		N2NE	33	16N	18E	FERGUS

Total: 6.50

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.

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