

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

\*\*\*\*\*

CLAIMANT: Thomas C. Carter

**CASE 41S-0654-R-2024**

41S 142259-00

41S 142260-00

41S 142262-00

41S 142263-00

**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**  
**FINDINGS OF FACT**

1. Thomas C. Carter (Carter) is the record owner of claims 41S 142259-00, 41S 142260-00, 41S 142262-00, and 41S 142263-00.

2. Claims 41S 142259-00, 41S 142260-00, 41S 142262-00, and 41S 142263-00 were decreed with DNRC issue remarks:

**41S 142259-00:**

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY( 1970 )APPEARS TO INDICATE 28.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 12.38 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.
- SOURCE NAME AND RESERVOIR RECORD 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.

**41S 142260-00:**

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-190 AND 30027-278-192 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- 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.

**41S 142262-00:**

- 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). 30027-278-190 AND 30027-278-192 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- 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.

- POINT OF DIVERSION AND RESERVOIR RECORD 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.

**41S 142263-00:**

- 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). 30027-278-190 AND 30027-278-192 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- 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.

3. Carter was ordered to meet with a DNRC employee to address the unresolved issue remarks. (Doc.<sup>1</sup>1.00).

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on December 27, 2024. (Doc. 3.00). The Memorandum reported Ms. Bluhm met with Claimant Carter on November 13, 2024. Ms. Bluhm indicated she reviewed the Fergus County Water Resources Survey and aerial photographs to prepare the Memorandum.

5. **Claim 41S 142259-00:** Ms. Bluhm identified all 39.00 acres claimed for claim 41S 142259-00. Additionally, Ms. Bluhm stated:

The volume was claimed to be 96.33 AC-ft. The DNRC investigated the claimed reservoir and concluded the holding capacity for this reservoir is estimated to be 7.78 AC-ft. Following the DNRC's guideline of 2.5 fills per year, the DNRC estimated the capacity to be 19.45AC-FT.

Based on the information provided by Ms. Bluhm, it appears the volume for claim 41S 142259-00 should be reduced as follows:

Volume: 19.45 96.33-AC-FT

Additionally, the issue remarks should be removed.

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<sup>1</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

6. **Claims 41S 142260-00, 41S 142262-00, 41S 142263-00:** Ms. Bluhm confirmed “the DNRC and claimant found the historical ditch used to irrigate and evidence of hydration present on the property.” Ms. Bluhm recommended the issue remarks be removed with no modification to the elements of the claims.

7. An Order was issued to determine if Claimant Carter agreed or disagreed with the recommendations made by Ms. Bluhm. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimant Thomas C. Carter agreed proposed modification for claim 41S 142259-00. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was 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. 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. Notice-type issue remarks were decreed on each of the claims in this Case. As no objections were filed, no additional proceedings are required because of the remarks.

## RECOMMENDATIONS

1. Claim 41S 142259-00 should be modified as follows:

Volume: 19.45 06.33-AC-FT

2. The issue remarks should be removed from claims 441S 142259-00, 41S 142260-00, 41S 142262-00, and 41S 142263-00.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Thomas C. Carter  
54 Thomas Ln  
Lewistown, MT 59457

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

**Water Right Number:** 41S 142259-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

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

**Priority Date:** DECEMBER 31, 1945

**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:** 19.45 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 39.00

**\*Source Name:** BURNETTE CREEK, SOUTH FORK

**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		NWNESE	27	16N	18E	FERGUS

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

**Diversion Means:** HEADGATE

**\*Reservoir:** ONSTREAM **Reservoir Name:** ROHEL POND

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNESE	27	16N	18E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 10.00 FEET

**Depth:** 7.00 FEET

**Surface Area:** 2.78 ACRES

**Capacity:** 7.78 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	7.00		S2NWSE	27	16N	18E	FERGUS
2	32.00		SW	27	16N	18E	FERGUS

**Total:** 39.00

**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.

142252-00

142259-00

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

**Water Right Number:** 41S 142260-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

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

**Priority Date:** DECEMBER 31, 1934

**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:** 207.36 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 64.00

**Source Name:** 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		NENESW	22	16N	18E	FERGUS

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

2		NWNESW	22	16N	18E	FERGUS
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**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**\*Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENESW	22	16N	18E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 19.00 FEET

**Depth:** 16.00 FEET

**Surface Area:** 16.40 ACRES

**Capacity:** 105.00 ACRE-FEET

**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	38.00		SW	22	16N	18E	FERGUS



2	<u>26.00</u>	NW	27	16N	18E	FERGUS
<b>Total:</b>	64.00					

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**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.

142251-00      142260-00

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

**Water Right Number:** 41S 142262-00 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:** 207.36 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 64.00

**Source Name:** 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		SWNENW	22	16N	18E	FERGUS

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**\*Reservoir:** ONSTREAM **Reservoir Name:** CARTERS LOWER POND

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENW	22	16N	18E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 19.00 FEET

**Depth:** 16.00 FEET

**Surface Area:** 16.40 ACRES

**Capacity:** 105.00 ACRE-FEET

THE DAM EXTENDS INTO THE NWNWNE SEC 22 TWP 16N RGE 18E FERGUS COUNTY.

**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	38.00		SW	22	16N	18E	FERGUS
2	26.00		NW	27	16N	18E	FERGUS

**Total:** 64.00

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

**Water Right Number:** 41S 142263-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

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

**Priority Date:** DECEMBER 31, 1950

**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:** 267.36 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 64.00

**Source Name:** 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		NENWSE	15	16N	18E	FERGUS

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**\*Reservoir:** ONSTREAM **Reservoir Name:** CARTER'S UPPER POND

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWSE	15	16N	18E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 21.00 FEET

**Depth:** 18.00 FEET

**Surface Area:** 19.45 ACRES

**Capacity:** 140.00 ACRE-FEET

**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	38.00		SW	22	16N	18E	FERGUS
2	26.00		NW	27	16N	18E	FERGUS
<b>Total:</b>	<b>64.00</b>						

**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.

142248-00

142263-00