

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

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CLAIMANT: Buffalo Creek Grain, LLC

CASE 41S-0736-R-2024

41S 131688-00  
41S 132863-00  
41S 132865-00  
41S 132866-00

**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. Claimant Buffalo Creek Grain, LLC (Buffalo Creek) is the record owner of claims 41S 131688-00, 41S 132863-00, 41S 132865-00, and 41S 132866-00.

2. Claims 41S 131688-00, 41S 132863-00, 41S 132865-00, and 41S 132866-00 were decreed with DNRC issue remarks:

**Claim 41S 131688-00:**

- 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). 30045-179-67 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.
- ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 06/25/2018 , THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY THOMAS & KRISTINE WICHMAN .

**Claim 41S 132863-00 and 41S 132865-00:**

- THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE CLAIMED RESERVOIR CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

**Claim 41S 132866-00:**

- THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NWNENE SEC 25 TWP 13N RGE 15E FERGUS COUNTY.
- 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, MEANS 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.

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

4. DNRC Water Resources Specialist Carli Bluhm filed a Memorandum on January 17, 2025. (Doc. 3.00). Ms. Bluhm reported that Buffalo Creek failed to contact the DNRC. Ms. Bluhm indicated that she reviewed the Judith County Water Resource Survey and aerial photos to prepare the Memorandum.

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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.

5. **41S 131688-00:** Ms. Bluhm reported that she found no irrigation for claim 41S 131688-00 and recommended the claim be dismissed.

6. **41S 132863-00:** Ms. Bluhm stated the following regarding claim 41S 132863-00:

The point of diversion is claimed as being in the NWNENW of Section 31, T13N, R16E. After investigation, the DNRC found the correct legal land description to be SENENW of Section 31, T13N, R16E. The DNRC noticed with the change in legal land description and using historical imagery to examine this claim there is only one reservoir on this property. While changing this claim's point of diversion the DNRC noticed claim 41S 132864-00 is claiming the same reservoir utilizing the same GW3 form within the files. With these findings, the DNRC determined these two claims would be duplicate filings.

Due to this water right claiming the same reservoir as another right, the DNRC recommends this water right be dismissed.

Ms. Bluhm recommended claim 41S 132863-00 be dismissed.

Upon review of the file for claim 41S 132864-00, it appears there are *two* reservoirs – not one, as Ms. Bluhm states. Claim 41S 132863-00 describes one reservoir and claim 41S 132864-00 appears to have been filed for the reservoir in the SESENW of Section 31, Township 13 North, Range 16 East. The following document was attached to the Statement of Claim 41S 132864-00 explaining the second reservoir:

ATTACHMENT: WRIGHT RANCHES, INC.  
(Stockwater - Reservoirs)

Claimant constructed two reservoirs in Section 31 of Township 13 North, Range 16 East, M.P.M. beginning September 15, 1945; when the "Notice of Completion of Groundwater Appropriation Without Well" was filed, the form failed to mention the second reservoir.

No information was provided overcoming the prima facie Statement of Claim as to the point of diversion for claim 41S 132863-00, and without additional information, the point of diversion will remain in the NWNENW of Section 31, Township 13 North, Range 16 East.

7. **41S 132865-00:** Ms. Bluhm explained that the means of diversion for this onstream reservoir should be described as "dam." Additionally, Ms. Bluhm recommended

the point of diversion be modified to the SWSWSE of Section 25, Township 13 North, Range 16 East.

8. **41S 132866-00:** Ms. Bluhm explained that the DNRC the modified point of diversion during its examination of claim 41S 132866-00; because the claim is a direct from source stock claim, the place of use should be identical to the point of diversion legal land description.

9. An Order was issued to determine if Buffalo Creek 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 Buffalo Creek Grain, LLC agreed with the recommended modifications, including the dismissal of claim 41S 131688-00. 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. Claim 41S 132866-00 was decreed with notice-type issue remarks that have served their purpose. No objections were filed, and the issue notice issue remarks can be removed.

RECOMMENDATIONS

1. Claim 41S 131688-00 should be dismissed.
2. The issue remarks should be removed from claim 41S 132863-00.
3. Claim 41S 132865-00 should be modified as follows:

**Diversion Means:** UNKNOWN DAM  
**Reservoir:** ONSTREAM  

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
SWSWSE	NWSENE	25	13N	15E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

And the issue remarks should be removed.

4. Claim 41S 132866-00 should be modified as follows:

**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		NWNENE	NWNE	25	13N	15E	FERGUS

And the issue remarks should be removed.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Buffalo Creek Grain, LLC  
 1100 Straw Rd  
 Moore, MT 59464-9476

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

**Water Right Number:** 41S 131688-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** BUFFALO CREEK GRAIN LLC  
1100 STRAW RD  
MOORE, MT 59464-9476

**\*Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** EAST BUFFALO CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 41S 132863-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BUFFALO CREEK GRAIN LLC  
1100 STRAW RD  
MOORE, MT 59464-9476

**Priority Date:** SEPTEMBER 15, 1945

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*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:** UNNAMED TRIBUTARY OF EAST BUFFALO 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		NWNENW	31	13N	16E	FERGUS

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** UNKNOWN

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNENW	31	13N	16E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**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			NENW	31	13N	16E	FERGUS

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

**Water Right Number:** 41S 132865-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BUFFALO CREEK GRAIN LLC  
1100 STRAW RD  
MOORE, MT 59464-9476

**Priority Date:** OCTOBER 1, 1945

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*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:** UNNAMED TRIBUTARY OF ROSS FORK 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		NWSENE	25	13N	15E	FERGUS

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSE	25	13N	15E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**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			SENE	25	13N	15E	FERGUS

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

**Water Right Number:** 41S 132866-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BUFFALO CREEK GRAIN LLC  
1100 STRAW RD  
MOORE, MT 59464-9476

**Priority Date:** OCTOBER 1, 1945

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*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:** UNNAMED TRIBUTARY OF ROSS FORK 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		NWNENE	25	13N	15E	FERGUS

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**\*Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNENE	25	13N	15E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 11.00 FEET

**Depth:** 8.00 FEET

**Surface Area:** 0.37 ACRES

**Capacity:** 1.18 ACRE-FEET

**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			NWNENE	25	13N	15E	FERGUS