

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: Sherra (Sherry) L. Dahl; Fowler Irrevocable
Living Trust

CASE 41S-0788-R-2024
41S 139420-00
41S 139423-00

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. Sherry (Sherry) L. Dahl is the record owner of claim 41S 139420-00; Sherra (Sherry) L. Dahl and the Fowler Irrevocable Living Trust (Claimants) are the record owners of claims 41S 139423-00.

2. Claims 41S 139420-00 and 41S 139423-00 were decreed with DNRC issue remarks:

41S 139420-00:

- THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.
- AS OF 01/22/2022 , THIS WATER RIGHT APPEARS TO BE OWNED BY DAHL SHERRA LEE ET AL , 1428 NEW YEAR GULCH , LEWISTOWN , MT 59457-8054.

41S 139423-00:

- 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). 30027-278-216 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 118 TIMES THE CAPACITY OF THE RESERVOIR.
- ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 08/28/2021 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY FOWLER IRREVOCABLE LIVING TRUST.
- 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. The Claimants were ordered to meet with a DNRC employee to address the unresolved issue remarks. (Doc.¹1.00).

4. On January 17, 2025, DNRC Water Resources Specialist Carli Bluhm filed a Memorandum. (Doc. 3.00). Ms. Bluhm reported that she met with Sherra L. Dahl on January 8, 2025. A map and proposed abstracts were attached to the Memorandum. Ms.

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

Bluhm indicated she reviewed the Fergus County Water Resources Survey field notes and aerial photographs to prepare the Memorandum.

5. **Claim 41S 139420-00:** Ms. Bluhm indicated that Sherra L. Dahl did not provide information regarding the flow rate for claim 41S 139420-00. Ms. Bluhm recommended the flow rate be reduced to the 35.00 gallon per minute (gpm) standard.

6. **Claim 41S 139423-00:** Ms. Bluhm reported the following:

During initial examination, the DNRC found 0 acres of irrigation. After this investigation and speaking with the claimant, the DNRC identified field boundaries and sprinkler lines indicating irrigation being present. The DNRC identified 26 acres of irrigation.

Ms. Bluhm recommended the following modifications be made to claim 41S 139420-00, addressing DNRC issue remarks:

Volume:	2.53	120.00 AC-FT					
Maximum Acres:	40.00	26.00					
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	10.00		SWSW	3	16N	19E	FERGUS
2	16.00	15.00	N2NWNW	10	16N	19E	FERGUS
3	5.00		SEWNW	10	16N	10E	FERGUS
4	10.00		W2NENW	10	16N	10E	FERGUS
Total:	40.00	26.00					

7. An Order was issued to determine if the Claimants 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 the Claimants agreed with the recommended modifications. 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. Claims 41S 139420-00 and 41S 139423-00 were 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. The flow rate of claim 41S 139420-00 should be reduced from 112.20 gpm to 35.00 gpm.

2. Claim 41S 139423-00 should be modified as follows:

Volume:	2.53	120.00 AC-FT					
Maximum Acres:	40.00	26.00					
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	10.00		SWSW	3	18N	19E	FERGUS
2	16.00	15.00	N2NWNW	10	18N	19E	FERGUS
3	5.00		SENNWNW	10	18N	10E	FERGUS
4	10.00		W2NENW	10	18N	10E	FERGUS
Total:	40.00	26.00					

3. The issue remarks should be removed from claims 41S 139420-00 and 41S 138423-00.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Sherra (Sherry) L. Dahl
 Fowler Irrevocable Living Trust
 1428 New Year Gulch
 Lewistown, MT 59457-8054

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

Water Right Number: 41S 139420-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHERRA (SHERRY) L DAHL
1428 NEW YEAR GULCH
LEWISTOWN, MT 59457-8054

Priority Date: MAY 27, 1893

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 35.00 GPM

***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: SPRING, UNNAMED TRIBUTARY OF MUSKRAT CREEK

Source Type: GROUNDWATER

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	10	16N	19E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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	10	16N	19E	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.

139420-00 139422-00

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

Water Right Number: 41S 139423-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SHERRA (SHERRY) L DAHL
1428 NEW YEAR GULCH
LEWISTOWN, MT 59457-8054

FOWLER IRREVOCABLE LIVING TRUST
1428 NEW YEAR GULCH RD
LEWISTOWN, MT 59457

Priority Date: MAY 27, 1893

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

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

Volume: 2.53 AC-FT

Climatic Area: 5 - LOW

Maximum Acres: 26.00

Source Name: MUSKRAT 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	10	16N	19E	FERGUS

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

Diversion Means: PUMP

***Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNENW	10	16N	19E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 14.00 FEET

Depth: 11.00 FEET

Surface Area: 0.23 ACRES

Capacity: 1.01 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	10.00		SWSW	3	16N	19E	FERGUS

2	<u>16.00</u>	N2NWNW	10	16N	19E	FERGUS
Total:	26.00					