

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: ~~Turner Ranch, Inc.~~; Paul A. Tyler

CASE 41S-1059-R-2025

41S 14593-00

41S 14630-00

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. The DNRC processed an ownership update for claims 41S 14593-00 and 41S 14630-00 on January 31, 2025, transferring record ownership of the claims from Turner Ranch Inc. to Paul A. Tyler. The caption of Case 41S-1059-R-2025 has been updated to reflect the ownership transfer.

2. Claims 41S 14593-00 and 41S 14630-00 were decreed with DNRC issue remarks:

Claim 41S 14593-00:

- 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.
- 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.

Claim 41S 14630-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-72 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

3. The Claimant was ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claim 41S 14630-00. (Doc.¹1.00).

4. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating he met with Paul A. Tyler on January 24, 2025. (Doc. 4.00). Mr. Ahlgren indicated he reviewed the Judith Basin County Water Resource Survey and aerial photos to prepare the Memorandum.

5. Mr. Ahlgren explained that claim 41S 14630-00 was originally claimed for 5.00 acres and was reduced to 2.50 acres during verification:

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

During initial examination, the DNRC identified 0.00 acres of irrigation in the Fergus Co. WRS and 0.00 acres using USDA aerial photograph 30045-179-72 taken 09/17/1979. The claimed acreage was reduced during verification to 2.50 acres. Although it should have been restored, the change was not made in the database and therefore the claim was decreed with 2.50 acres. During this investigation, using WRS aerial photograph NA-1T-60, the DNRC was able to substantiate the decreed 2.50 acres. The DNRC was unable to substantiate the 5.00 claimed acres. The claimant did not provide any information to substantiate more acreage.

Mr. Ahlgren was able to substantiate the 2.50 acres decreed in the Preliminary Decree and recommended claim 41S 14630-00 remain as decreed with no changes. Mr. Ahlgren reported Claimant Paul A. Tyler agrees with the recommendation.

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 period of diversion, means of diversion, and reservoir record issue remarks decreed on claim 41S 14593-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. Claims 41S 14593-00 and 14630-00 should remain as decreed and the issue remarks should be removed.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

**Paul A. Tyler
PO Box 154
Moore, MT 59464-0154**

Turner Ranch Inc.
616 Turner Ln
Moore, MT 59464-9203
(Last Order)

**Caption and Service List Updated:
2/6/2025**

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

Water Right Number: 41S 14593-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PAUL A TYLER
PO BOX 154
MOORE, MT 59464-0154

Priority Date: JUNE 1, 1935

Type of Historical Right: USE

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		NENENE	35	14N	15E	JUDITH BASIN

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

Diversion Means: DAM

***Reservoir:** ONSTREAM **Reservoir Name:** TURNER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENENE	35	14N	15E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 16.00 FEET

Depth: 13.00 FEET

Surface Area: 2.59 ACRES

Capacity: 13.47 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			NENENE	35	14N	15E	JUDITH BASIN

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.

14593-00

14630-00

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

Water Right Number: 41S 14630-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: PAUL A TYLER
PO BOX 154
MOORE, MT 59464-0154

Priority Date: JUNE 1, 1935

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: 11.50 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 2.50

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		NENENE	35	14N	15E	JUDITH BASIN

Period of Diversion: APRIL 1 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>
	NENENE	35	14N	15E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 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	2.50		NENENE	35	14N	15E	JUDITH BASIN

Total: 2.50

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.

14593-00 14630-00