

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: Burkheimer Nisbet 406 LLC

OBJECTOR: Peter Nisbet

CASE 41S-0018-R-2024

41S 139624-00

41S 139625-00

41S 139626-00

41S 139627-00

41S 139629-00

41S 139630-00

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

The above-captioned claims appeared in the Preliminary Decree for the Judith River (Basin 41S) with issue remarks. Peter Nisbet filed objections to claims 41S 139624-00, 41S 139625-00, 41S 139626-00, 41S 139627-00 and 41S 139629-00.

The claims were consolidated into Case 41S-0018-R-2024 on February 16, 2024 and the claimants were ordered to work with the Department of Natural Resources and Conservation ("DNRC") to resolve the issue remarks on the claims. On June 20, 2024, a Memorandum ("Memo") was filed (Doc.¹ 2.00). On September 17, 2024, this Master issued an Order Setting Filing Deadline ("Order"), detailing potential modifications relating to the objections as well as requiring the claimant to file documentation stating their position on the recommendations in the Memo and the potential modifications detailed in the Order. The Order stated that "[i]f nothing is filed, it will be viewed as agreement with the recommendations and modifications discussed above and a Master's Report will be issued". Nothing was filed in response to the Order.

FINDINGS OF FACT

1. Claim 41S 139624-00 was decreed with the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

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.

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-60 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

SOURCE NAME, 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.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 8.6 TIMES THE CAPACITY OF THE RESERVOIR.

2. Pursuant to the Memo and Order, claim 41S 139624-00 should be modified as follows:

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

Volume: ~~304.00 AC FT~~ 165.23 AF

Maximum Acres: ~~102.00~~ 137.38

***Period of Diversion:** ~~APRIL 15 TO OCTOBER 15~~ Jan 1-Dec 31

***Reservoir:** ONSTREAM

	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
Diversion to Reservoir:		S2SW	27	17N	16E	FERGUS
Dam Height:		17.00 FEET				25.00 Feet
Depth:		11.00 FEET				20.00 Feet
Surface Area:		7.51	ACRES			
Capacity:		42.00 ACRE FEET				66.09 Acre-Feet

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	20.00	62.56	E2SW	SESW	27	17N	16E FERGUS
2	30.00	32.27	W2SW	SWSW	27	17N	16E FERGUS
3	40.00	41.27	S2NW	NESW	27	17N	16E FERGUS
4	12.00	1.28	E2SESE	SWNW	27	17N	16E FERGUS
5	00.00			SENW	27	17N	16E FERGUS
Total:	102.00	137.38					

3. The Memo states that modification of the maximum acres and volume resolves the issue remarks questioning those elements. The Memo further recommends removing the flow rate issue remark.

4. Claim 41S 139625-00 was decreed with the following 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.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-58 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

5. Pursuant to the Memo and Order, claim 41S 139625-00 should be modified as follows:

Flow Rate: ~~0.57 CFS~~ 2.67 CFS

Maximum Acres: ~~04.30~~ 70.54

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	NWNWSE	SENWSE	22	17N	16E	FERGUS
2	NWSWNE	NESWNE	22	17N	16E	FERGUS
4	NENESW	NENESE	22	17N	16E	FERGUS

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	50.00	39.63	NE	22	17N	16E	FERGUS
2	10.00	17.50	NESW	22	17N	16E	FERGUS
3	7.50	SENW	22	17N	16E	FERGUS	
4	10.00	13.41	NWSE	22	17N	16E	FERGUS
Total:	04.30	70.54					

6. The Memo states that modification of the maximum acres and flow rate resolves the issue remarks questioning those elements.

7. Claim 41S 139626-00 was decreed with the following 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.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-60 , DATED 09/25/1979 , APPEARS TO INDICATE 24.50 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

POINT OF DIVERSION 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.

8. Pursuant to the Memo and Order, claim 41S 139626-00 should be modified as follows:

Flow Rate: ~~341.09 GPM~~ 2.5 CFS

Maximum Acres: ~~20.00~~ 20.06

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	20.00 20.06		W2NE	27	17N	16E	FERGUS
Total:	20.00 20.06						

9. The Points of Diversion and Places of Use for claim 41S 135627-00 should be decreed as follows:

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		SWNW	27	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWSW	27	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWNESE	28	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N2SESE	28	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		E2SWSE	28	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
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			SWNW	27	17N	16E	FERGUS
2			NWSW	27	17N	16E	FERGUS
3			SWNESE	28	17N	16E	FERGUS
4			N2SESE	28	17N	16E	FERGUS
5			E2SWSE	28	17N	16E	FERGUS

10. The Points of Diversion and Places of Use for claim 41S 135629-00 should be decreed as follows:

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		SESW	15	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		E2	22	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		E2NW	22	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NWNE	27	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
Period of Use:	JANUARY 1 TO DECEMBER 31					

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		SESW	15	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		E2	22	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		E2NW	22	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NWNE	27	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
Period of Use:	JANUARY 1 TO DECEMBER 31					

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie

proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, - 231(2), MCA.

CONCLUSION OF LAW

1. The DNRC recommendations and modifications discussed in the Order should be adopted.
2. Adoption of the recommendations and modifications discussed above resolves the issue remarks and objections to the claims.

RECOMMENDATIONS

1. The claims should be modified as discussed above.
2. Modification of the claims resolves the issue remarks and objections. The remarks should be removed from the claims and the objections should be dismissed.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Burkheimer Nisbet 406 LLC
% Peter Nisbet
9503 E. Montgomery Ave.
Spokane, WA 99206

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

Water Right Number: 41S 139624-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: BURKHEIMER NISBET 406 LLC
%PETER NISBET
9503 E. MONTGOMERY AVE
SPOKANE, WA 99206

Priority Date: DECEMBER 31, 1954

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

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

Volume: 165.23 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 137.38

***Source Name:** UNNAMED TRIBUTARY OF INDIAN CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS UNNAMED TRIBUTARY STINER CREEK

***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		NESWSW	27	17N	16E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

PUMP USED AS AN ADDITIONAL MEANS OF DIVERSION.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
S2SW		27	17N	16E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 25.00 FEET

Depth: 20.00 FEET

Surface Area: 7.51 ACRES

Capacity: 66.09 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	62.56		E2SW	27	17N	16E	FERGUS

2	32.27	W2SW	27	17N	16E	FERGUS
3	41.27	S2NW	27	17N	16E	FERGUS
4	1.28	E2SESE	27	17N	16E	FERGUS
Total:	<u>137.38</u>					

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.

139624-00

139630-00

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

Water Right Number: 41S 139625-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BURKHEIMER NISBET 406 LLC
%PETER NISBET
9503 E. MONTGOMERY AVE
SPOKANE, WA 99206

Priority Date: JUNE 13, 1888

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.67 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 70.54

Source Name: JUDITH RIVER

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		NWNWSE	22	17N	16E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	PUMP					
2		NWSWNE	22	17N	16E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	PUMP					
3		SESENW	22	17N	16E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	PUMP					
4		NENESW	22	17N	16E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	PUMP					
5		NWSE	22	17N	16E	FERGUS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	PUMP					

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

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	39.63		NE	22	17N	16E	FERGUS
2	17.50		NESW	22	17N	16E	FERGUS
3	13.41		NWSE	22	17N	16E	FERGUS
Total:	<u>70.54</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

139623-00 139625-00

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.

139625-00 139629-00

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

Water Right Number: 41S 139626-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BURKHEIMER NISBET 406 LLC
%PETER NISBET
9503 E. MONTGOMERY AVE
SPOKANE, WA 99206

Priority Date: OCTOBER 10, 1958

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 20.06

Source Name: BIG SPRING 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		SWSENW	36	17N	16E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

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	20.06		W2NE	27	17N	16E	FERGUS

Total: 20.06

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

Water Right Number: 41S 139627-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BURKHEIMER NISBET 406 LLC
%PETER NISBET
9503 E. MONTGOMERY AVE
SPOKANE, WA 99206

Priority Date: NOVEMBER 23, 1951

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 INDIAN CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS STINER CREEK

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		SWNW	27	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWSW	27	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWNESE	28	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N2SESE	28	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		E2SWSE	28	17N	16E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

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			SWNW	27	17N	16E	FERGUS
2			NWSW	27	17N	16E	FERGUS
3			SWNESE	28	17N	16E	FERGUS
4			N2SESE	28	17N	16E	FERGUS
5			E2SWSE	28	17N	16E	FERGUS

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

Water Right Number: 41S 139629-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BURKHEIMER NISBET 406 LLC
%PETER NISBET
9503 E. MONTGOMERY AVE
SPOKANE, WA 99206

Priority Date: JUNE 13, 1888

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: JUDITH RIVER

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		SESW	15	17N	16E	FERGUS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
2		E2	22	17N	16E	FERGUS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
3		E2NW	22	17N	16E	FERGUS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
4		NWNE	27	17N	16E	FERGUS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				

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			SESW	15	17N	16E	FERGUS
2			E2	22	17N	16E	FERGUS
3			E2NW	22	17N	16E	FERGUS

4

NWNE 27 17N 16E 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.

139625-00

139629-00

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

Water Right Number: 41S 139630-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BURKHEIMER NISBET 406 LLC
%PETER NISBET
9503 E. MONTGOMERY AVE
SPOKANE, WA 99206

Priority Date: DECEMBER 31, 1954

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 INDIAN CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS UNNAMED TRIBUTARY STINER CREEK

***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		NESWSW	27	17N	16E	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>
	S2SW	27	17N	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			SW	27	17N	16E	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.