

Montana Water Court  
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**FILED**  
01/22/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41S-0021-R-2024  
Block, Nathaniel  
9.00

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
JUDITH RIVER BASIN (41S)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Burleighs Angus Ranch Inc.; Scott W.  
Sweeney; Veronica E. Sweeney

**CASE 41S-0021-R-2024**  
41S 121209-00

OBJECTOR: Montana State Board of Land Commissioners

**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 claim appeared in the Preliminary Decree for the Judith River (Basin 41S) and received an objection from the Montana State Board of Land Commissioners (“TLMD”). The claim was consolidated into Water Court Case 41S-0021-R-2024 on February 21, 2024.

On September 24, 2024, the parties filed a Stipulation for Resolution of Objection and Issue Remark seeking to add the TLMD as a co-owner of the claim and other modifications to the claim. The Stipulation was signed by all parties.

## FINDINGS OF FACT

1. Pursuant to the Stipulation, the TMLD should be added as co-owner of claim 41S 121209-00.

2. Pursuant to the Stipulation<sup>1</sup>, the parties seek to modify the place of use for the claim as follows:

**Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	11.77		SENW	25	15N	18E	FERGUS
2	0.15		NWSE	25	15N	18E	FERGUS
3	3.36		SWNE	25	15N	18E	FERGUS
4	8.97		N2NESW	25	15N	18E	FERGUS
5	47.88		SE	25	15N	18E	FERGUS
6	10.36		E2NENE	36	15N	18E	FERGUS
7	0.37	4		30	15N	19E	FERGUS
8	26.77		NWNW	31	15N	19E	FERGUS
<b>TOTAL: 109.63</b>							

3. Claim 41S 121209-00 was decreed with the following substantive issue remarks:

THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 70.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-194, 30027-278-196, AND 30027-278-212 , DATED 09/25/1979 , APPEARS TO INDICATE 60.80 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

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<sup>1</sup> Attached to the Stipulation was a “Verified Motion to Amend Water Right Claim” describing place of use modifications that were redundant to the modifications described in the Stipulation.

## 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(12), MCA. The purpose of the Water Court is to adjudicate rights to the use of water as they existed on July 1, 1973. *In re Clark Fork River*, 254 Mont. 11, 17, 833 P.3d 1120 (Mont. 1992).

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. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents (including objections and stipulations) filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the Statement are supported by evidence.

4. Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees, Case 42B-1, ¶ 3 at p. 14, (Order Denying Motion June 27, 2014). Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claims.

5. The State of Montana holds title to water rights perfected on state school trust lands if the water right was perfected after the State gained title to the land. See *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985).

6. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

### CONCLUSIONS OF LAW

1. The issue remarks questioning irrigated acreage should be removed from the claim.
2. The claim should be modified as discussed above.

### RECOMMENDATION

1. Upon review of the record in this case the claim should be modified as discussed above. TLMD’s objection should be resolved.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

### ELECTRONICALLY SIGNED AND DATED BELOW.

**Service via USPS Mail:**

Burleighs Angus Ranch Inc.  
3691 Upper Spring Creek Road  
Lewistown, MT 59457

Scott W. Sweeney  
Veronica E. Sweeney  
PO Box 127  
Lewistown, MT 59457

**Service via Electronic Mail:**

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

**Water Right Number:** 41S 121209-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

SCOTT W SWEENEY  
PO BOX 127  
LEWISTOWN, MT 59457

VERONICA E SWEENEY  
PO BOX 127  
LEWISTOWN, MT 59457

BURLEIGHS ANGUS RANCH INC  
3691 UPPER SPRING CREEK RD  
LEWISTOWN, MT 59457

MONTANA STATE BOARD OF LAND COMMISSIONERS  
TRUST LAND MANAGEMENT DIVISION  
PO BOX 201601  
HELENA, MT 59620-1601

**Priority Date:** DECEMBER 31, 1925

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 3.86 CFS

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

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 109.63

**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		S2	25	15N	18E	FERGUS

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

**Diversion Means:** PUMP

2		NWNW	31	15N	19E	FERGUS
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**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	11.77		SENW	25	15N	18E	FERGUS
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