

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: Joe Delaney; Leanne Delaney

CASE 41S-0026-R-2024
41S 131729-00

OBJECTOR: United States of America (Bureau of Land
Management)

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 United States (Bureau of Land

Management) (“BLM”). The claim was consolidated into Case 41S-0026-R-2024 on March 1, 2024, and on August 13, 2024, a Stipulation signed by the BLM and Claimants Joe and Leanne Delaney was filed resolving the objection (Doc.¹ 11.00).

FINDINGS OF FACT

1. Pursuant to the Stipulation, claim 41S 131729-00 should be modified as follows:

Source Name: UNNAMED TRIBUTARY OF LINCOLN GULCH
Source Type: SURFACE WATER
SOURCE NAME INFORMATION REMARK: SOURCE ALSO INCLUDES UNNAMED TRIBUTARIES OF LINCOLN GULCH.

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		S2SW	25	17N	19E	FERGUS
2		N2SE	25	17N	19E	FERGUS
3		E2SE	25	17N	19E	FERGUS
4		W2NE	25	17N	19E	FERGUS
5		SESENE	25	17N	19E	FERGUS
6		NENENW	25	17N	19E	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			S2SW	25	17N	19E	FERGUS
2			N2SE	25	17N	19E	FERGUS
3			E2SE	25	17N	19E	FERGUS
4			W2NE	25	17N	19E	FERGUS
5			SESENE	25	17N	19E	FERGUS
6			NENENW	25	17N	19E	FERGUS

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

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

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.

4. “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).

CONCLUSION OF LAW

1. The Stipulation between the parties resolves the objection and the claim should be modified as described above.

RECOMMENDATION

1. Upon review of the record in this case, the claim should be modified as discussed above.

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:

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

Water Right Number: 41S 131729-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOE DELANEY
PO BOX 34
GRASS RANGE, MT 59032-0034

LEANNE DELANEY
PO BOX 34
GRASS RANGE, MT 59032-0034

Priority Date: MAY 15, 1896

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:** LINCOLN GULCH

Source Type: SURFACE WATER

SOURCE ALSO INCLUDES UNNAMED TRIBUTARIES OF LINCOLN GULCH.

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		S2SW	25	17N	19E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		N2SE	25	17N	19E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		E2SE	25	17N	19E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		W2NE	25	17N	19E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SESENE	25	17N	19E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

6 NENENW 25 17N 19E 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>
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