

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: Heather Altenburg; Brock Altenburg

CASE 41S-0614-R-2024  
41S 3175-00  
41S 3176-00

**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. Heather Altenburg and Brock Altenburg (the Altenburgs) are the record co-owners of irrigation claims 41S 3175-00 and 41S 3176-00.

2. The Altenburgs were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims in this Case:

**41S 3175-00:**

- 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). 30027-278-56 AND 30027-278-104, DATED 09/25/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

**41S 3176-00:**

- 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). 30027-278-56 AND 30027-278-104, DATED 09/25/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum regarding her review of the claims. (Doc.<sup>1</sup> 2.00). Ms. Bluhm indicated she was not contacted by the Altenburgs. Ms. Bluhm indicated she reviewed information in the claim files, aerial photographs, and the 1970 Fergus County Water Resources Survey to prepare the Memorandum and make the recommendations; maps and proposed abstracts were attached to the memorandum.

4. **Point of Diversion:** Ms. Bluhm confirmed the claimed point of diversion for both claims.

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

5. **Maximum Acres/Place of Use:** Ms. Bluhm confirmed 74.00 acres as historically irrigated for claims 41S 3175-00 and 41S 3176-00 and recommended the following place of use modification:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	10.00		SWNW	20	18N	16E	FERGUS
2	7.00 28.00		W2SW	20	18N	16E	FERGUS
3	35.00		S2NE	19	18N	16E	FERGUS
4	24.00		NESE	10	18N	16E	FERGUS
5	8.00 13.00		SESE	19	18N	16E	FERGUS
6	43.00 33.00		E2NE	30	18N	16E	FERGUS
7	18.00 35.00		W2NW	29	18N	16E	FERGUS
<b>Total:</b>	<b>178.00</b>						
		<b>74.00</b>					

6. **Flow Rate:** Ms. Bluhm recommended the flow rate for claims 41S 3175-00 and 41S 3176-00 be reduced to 2.80 cubic feet per second, consistent with the 17.00 gallon per minute guideline for irrigation claims.

7. An Order was issued setting a deadline for the Altenburgs to file statements agreeing or disagreeing with the following recommended changes to claims 41S 3175-00 and 41S 3176-00:

Flow Rate: 2.80 4.00-CFS

Maximum Acres: 74.00 178.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	10.00		SWNW	20	18N	16E	FERGUS
2	7.00 28.00		W2SW	20	18N	16E	FERGUS
3	35.00		S2NE	19	18N	16E	FERGUS
4	24.00		NESE	10	18N	16E	FERGUS
5	8.00 13.00		SESE	19	18N	16E	FERGUS
6	43.00 33.00		E2NE	30	18N	16E	FERGUS
7	18.00 35.00		W2NW	29	18N	16E	FERGUS
<b>Total:</b>	<b>178.00</b>						
		<b>74.00</b>					

The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimants Heather Altenburg and Brock Altenburg agree with the proposed modifications and a Master’s Report would be issued recommending the modifications be made and the issue remarks be removed. The Order included the following language:

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 by the deadline.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim Sections 85-2-247 and 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. The issue remark decreed on claims 41S 3175-00 and 41S 3176-00 indicating the “maximum combined acres for this group of supplemental claims may require modification...” is not relevant because supplemental rights remarks on claims no longer include a quantified acreage figure.

### RECOMMENDATIONS

1. Claims 41S 3175-00 and 41S 3176-00 should be modified as shown in Finding of Fact No. 5.

2. The issue remarks should be removed from claims 41S 3175-00 and 41S 3176-00.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Heather Altenburg  
Brock Altenburg  
1216 Husted Rd  
Lewistown, MT 59457-3207

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

**Water Right Number:** 41S 3175-00 STATEMENT OF CLAIM  
**Version:** 5 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BROCK ALTENBURG  
1216 HUSTED RD  
LEWISTOWN, MT 59457-3207

**Priority Date:** APRIL 20, 1906

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 2.80 CFS

**Volume:** 426.40 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 74.00

**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		NWSWSW	20	18N	16E	FERGUS

**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** PUMP

**Period of Use:** MAY 1 TO SEPTEMBER 30

**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	7.00		W2SW	20	18N	16E	FERGUS
2	8.00		SESE	19	18N	16E	FERGUS
3	43.00		E2NE	30	18N	16E	FERGUS
4	16.00		W2NW	29	18N	16E	FERGUS

**Total:** 74.00

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

**Water Right Number:** 41S 3176-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BROCK ALTENBURG  
1216 HUSTED RD  
LEWISTOWN, MT 59457-3207

**Priority Date:** MAY 15, 1893

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 2.80 CFS

**Volume:** 426.40 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 74.00

**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		NWSWSW	20	18N	16E	FERGUS

**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** PUMP

**Period of Use:** MAY 1 TO SEPTEMBER 30

**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	7.00		W2SW	20	18N	16E	FERGUS
2	8.00		SESE	19	18N	16E	FERGUS
3	43.00		E2NE	30	18N	16E	FERGUS
4	16.00		W2NW	29	18N	16E	FERGUS

**Total:** 74.00