

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: Hope R. Bradley; Faith L. Hunt

CASE 41S-0713-R-2024
41S 6385-00

NOTICE OF INTENT TO APPEAR: Montana Fish Wildlife
& Parks

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, conclusion 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. Hope R. Bradley and Faith L. Hunt ("Claimants") are the record co-owners of claim 41S 6385-00.

2. Claim 41S 6385-00 was decreed with DNRC issue remarks:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- 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.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-67 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON ROSS' FORK CREEK WITH A PRIORITY DATE PREDATING CASE NO 756, FERGUS COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

3. Montana Fish Wildlife & Parks (DFWP) filed a Notice of Intent to Appear for claim 41S 6385-00.

4. The Claimants were ordered to meet with the DNRC to address the acres irrigated/place of use and flow rate issue remarks decreed on claim 41S 6385-00.

5. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum ultimately recommending the place of use be reduced to 132.00 acres and the flow rate be reduced to 2,244.00 gallons per minute (5.00 cubic feet per second). (Doc.¹ 2.00). An Order was issued to determine if the Claimants agreed or disagreed with Ms. Bluhm's recommendations. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimants Hope R. Bradley and Faith L. Hunt agree with the following modifications to claim 41S 6385-00:

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

Flow Rate:	5.31 CFS	5.00 CFS					
Maximum Acres:	140.00	132.00					
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	52.00	60.00	W2NE	23	13N	15E	FERGUS
2	30.00		E2NW	23	13N	15E	FERGUS
3	50.00		E2SW	23	13N	15E	FERGUS
Total:	140.00	132.00					

Nothing was filed by the September 16, 2024 deadline.

6. An Order was issued to determine how the Notice of Intent to Appear should be addressed. (Doc. 4.00). On October 18, 2024, FWP filed its Statement to Water Master Anika Stern Regarding Ms. Bluhm's August 8, 2024, Memorandum and the Declaration of FWP's Water Conservation Specialist Andrew Brummond. (Doc. 5.00). The October 18, 2024 filing explained that FWP disagrees with Ms. Bluhm's recommendation and DFWP appeared to contend claim 41S 6385-00 was not used since at least 1979. DFWP also explained that it tried to contact Claimants Hope R. Bradley and Faith L. Hunt to address the Notice of Intent to Appear concerns, but it did not hear back from the Claimants.

7. A Status Conference for Case 41S-0713-R-2024 was conducted on November 20, 2024 by telephone conference call. Alex R. Solavino III appeared on behalf of DFWP; Claimants Hope R. Bradley and Faith L. Hunt failed to appear. During the Conference, DFWP maintained claim 41S 6385-00 was abandoned and indicated it should be dismissed. A show cause filing deadline was set for Claimants Hope R. Bradley and Faith L. Hunt show cause why claim 41S 6385-00 should not be dismissed. The Order indicated the following:

If nothing is filed by the December 20, 2024 deadline, this Water Master will conclude Claimants Hope R. Bradley and Faith L. Hunt agree claim 41S 6385-00 should be dismissed.

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. (emphasis in original)

(Doc. 7.00). Nothing was filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 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.

RECOMMENDATIONS

1. Claim 41S 6385-00 should be dismissed.
2. The DFWP Objection should be dismissed as resolved.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Hope R. Bradley
2288 Ubet Road
Buffalo, MT 59418

Faith L. Hunt
P.O. Box 465
Glendon AB T0A 1PO
CANADA

Service Via Electronic Mail:

Alexander R. Scolavino III
Montana Department of Fish, Wildlife &
Parks
P.O. Box 200701
Helena, MT 59620
Alexander.Scolavino@Mt.Gov
Audrey.Kelly@mt.gov

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

Water Right Number: 41S 6385-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: HOPE R BRADLEY
2288 UBET ROAD
BUFFALO, MT 59418

FAITH L HUNT
PO BOX 465
GLENDON AB T0A 1P0
CANADA

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: ROSS FORK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.