

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: Helen K. Brevig

**CASE 41S-0718-R-2024**  
41S 3202-00  
41S 3203-00

**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. Helen K. Brevig is the record owner of claims 41S 3202-00 and 41S 3203-00.

2. Claims 41S 3202-00 and 41S 3203-00 were decreed with the following DNRC issue remarks:

- **Claim 41S 3202-00:**
  - THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 46.00 ACRES. THE DNRC’S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.
  - USDA AERIAL PHOTOGRAPH NO(S). 30027-278-62 , DATED 09/25/1979 , APPEARS TO INDICATE 13.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- **Claim 41S 3203-00:**
  - THE LOCATION OF THE DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. An Order was issued requiring Claimant Helen K. Brevig to contact the DNRC to address the unresolved issue remarks decreed on claims 41S 3202-00 and 41S 3203-00. (Doc.<sup>1</sup> 1.00).

4. DNRC Water Resources Specialist Carli Bluhm filed a Memorandum stating she met with the “Claimants” on July 19, 2024. (Doc. 2.00). It is unclear who Ms. Bluhm met with to discuss the claims in this Case. Ms. Bluhm indicated she reviewed the claim abstracts, the scanned claim files, aerial photos, and the Fergus County Water Resource Survey. Maps and proposed abstracts were attached to the Memorandum.

- **41S 3202-00:**
  - Ms. Bluhm recommended that claim 41S 3202-00 be reduced as follows, reflecting the historical use of the claim and addressing the issue remarks:

**Maximum Acres:**                      34.00 13.00

**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	20.00	6.00	NESW	26	16N	16E	FERGUS
2	14.00	7.00	SENW	26	16N	16E	FERGUS
<b>Total:</b>	<b>34.00</b>	<b>13.00</b>					

- **41S 3203-00:**
  - Ms. Bluhm indicated that she was able to confirm the existence of the claimed ditch and recommended the issue remark be removed from claim 41S 3203-00.

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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. A deadline was set to determine if Helen K. Brevig agreed or disagreed with the recommendations. (Doc. 3.00).

6. On November 20, 2024, Clark A. Brevig and Gail A. Brevig filed a statement. (Doc. 7.00). The filing explained that Claimant Helen A. Brevig is Clark’s mother and she has been deceased for many years, and Clark A. Brevig and Gail A. Brevig now own the property to which the claims are appurtenant. Clark A. Brevig and Gail A. Brevig state “We are willing to file an ownership update with the DNRC at any time...” If appropriate, the Brevigs may contact any DNRC office and update ownership.

Clark A. Brevig and Gail A. Brevig state they disagree with DNRC’s proposed modifications to claim 41S 3202-00 and they provided a statement explaining the historical use of the claim:

41S 3202-00- we disagree with the DNRC proposed modifications to Claim 41S 3202-00 dated August 16, 2024. The memorandum reduced the irrigated acres from 34.00 acres to 13.00 acres. We (Clark Brevig) farmed this land owned by Helen Brevig from 1970 to present and have conducted flood irrigation via known ditch. The irrigation was to capture a specialty barley market. The 13.00 acres referenced in the DNRC memorandum is sub irrigated and will always show different vegetation coloring in comparison to the 34.00 acres. In investigation of historic maps we were unable to find an ariel photograph showing clearing the irrigation of the 34 acres due to the fact the sub irrigation 13.00 acres verses grain crop does not produce enough variation of color to prove irrigation occurred. We are attaching to this the Memorandum document maps. We are asking the Water Court to consider this narrative and in it’s decree changing the acres from the DNRC memorandum of 13.00 acres back to the original filed claim of 34.00 acres as follows:

<u>ID</u>	<u>ACRES</u>	<u>QTR Sec.</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00	NESW	26	16N	16E	Fergus
2	14.00	SEnw	26	16N	16E	Fergus

Upon review of the claim file, the filings to date, conversations with Gail Brevig, and the abstract, this Water Master determined the abstract did not reflect the subirrigation and flood-type irrigation claimed by Helen Brevig and described by Gail Brevig. It appeared the following modifications may be appropriate:

**Water Right Number:** 41S 3202-00 STATEMENT OF CLAIM  
**Version:** 2 -- REEXAMINED  
**Status:** ACTIVE

**Owners:** HELEN K BREVIG  
 % CLARK BREVIG  
 876 QUARRY VIEW LANE  
 LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1930  
**Type of Historical Right:** USE  
**Purpose (Use):** IRRIGATION  
**Irrigation Type:** FLOOD

**\*Flow Rate:** NO-FLOW-RATE-HAS-BEEN-DECREED-FOR-THIS-USE-OF-NATURAL-SUBIRRIGATION-

**Volume:** 40.00 GPM 88.00-AC-FT VF009: THE TOTAL VOLUME OF THIS RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.  
**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 34.00  
**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF JUDITH RIVER  
**Source Type:** GROUNDWATER

**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		NESW	26	16N	16E	FERGUS
<b>Period of Diversion:</b>	APRIL 1 TO SEPTEMBER 15					
<b>Diversion Means:</b>	FLOWING <span style="border: 1px solid red; padding: 2px;">FLOOD</span>					
2		SENW	26	16N	16E	FERGUS
<b>Period of Diversion:</b>	APRIL 1 TO SEPTEMBER 15					
<b>Diversion Means:</b>	FLOWING <span style="border: 1px solid red; padding: 2px;">SUBIRRIGATION</span> <span style="border: 1px solid red; padding: 2px;">CMDI: WASTE AND SEEPAGE</span>					
<b>Period of Use:</b>	APRIL 1 TO SEPTEMBER 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	20.00		NESW	26	16N	16E	FERGUS
2	14.00		SENW	26	16N	16E	FERGUS
<b>Total:</b>	<b>34.00</b>						

7. Another deadline was set for the Claimant to agree or disagree that the modifications described in Finding of Fact No. 6 represent the historical use of the claim. The Order indicated that if nothing were filed by the deadline, a Master’s Report would be issued recommending the modifications described in Finding of Fact No. 6 be made to claim 41S 3202-00. (Doc. 8.00). 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 3202-00 should be modified as follows:<sup>2</sup>

**Water Right Number:** 41S 3202-00 STATEMENT OF CLAIM  
**Version:** 2 -- REEXAMINED  
**Status:** ACTIVE

**Owners:** HELEN K BREVIG  
 % CLARK BREVIG  
 876 QUARRY VIEW LANE  
 LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1930  
**Type of Historical Right:** USE  
**Purpose (Use):** IRRIGATION  
**Irrigation Type:** FLOOD

**\*Flow Rate:** NO-FLOW-RATE HAS BEEN DECREED FOR THIS USE OF NATURAL-SUBIRRIGATION.

**Volume:** 40.00 GPM 88.00 AC-FT VF009: THE TOTAL VOLUME OF THIS RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 34.00

**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF JUDITH RIVER  
**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESW	28	16N	16E	FERGUS
<b>Period of Diversion:</b>	APRIL 1 TO SEPTEMBER 15		<span style="border: 1px solid red; padding: 2px;">CMDI: THE IRRIGATION TYPE IN THE NESW SEC 28 TWP 16N RGE 16E IS FLOOD.</span>			
<b>Diversion Means:</b>	FLOWING	<span style="border: 1px solid red; padding: 2px;">SUBIRRIGATION</span>				
2		SENW	28	16N	16E	FERGUS
<b>Period of Diversion:</b>	APRIL 1 TO SEPTEMBER 15		<span style="border: 1px solid red; padding: 2px;">CMDI: THE IRRIGATION TYPE IN THE SENW SEC 28 TWP 16N RGE 16E IS WASTE AND SEEPAGE.</span>			
<b>Diversion Means:</b>	FLOWING	<span style="border: 1px solid red; padding: 2px;">SUBIRRIGATION</span>				

<sup>2</sup> Due to DNRC database restrictions, the point of diversion information remarks were modified slightly between the November 25, 2024 proposed abstract (see Finding of Fact No. 6), and the recommended modification to claim 41S 3202-00.

2. The issue remarks should be removed from claims 41S 3202-00 and 41S 3203-00.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Helen K. Brevig  
c/o Clark Brevig  
676 Quarry View Lane  
Lewistown, MT 59457

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

**Water Right Number:** 41S 3202-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HELEN K BREVIG  
% CLARK BREVIG  
676 QUARRY VIEW LANE  
LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1930

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 40.00 GPM

**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:** 34.00

**Source Name:** UNNAMED TRIBUTARY OF JUDITH RIVER

**Source Type:** GROUNDWATER

**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		NESW	26	16N	16E	FERGUS

**Period of Diversion:** APRIL 1 TO SEPTEMBER 15

**Diversion Means:** SUBIRRIGATION

2		SENW	26	16N	16E	FERGUS
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**Period of Diversion:** APRIL 1 TO SEPTEMBER 15

**Diversion Means:** SUBIRRIGATION

THE IRRIGATION TYPE IN THE NESW SEC 26 TWP 16N RGE 16E IS FLOOD.

THE IRRIGATION TYPE IN THE SENW SEC 26 TWP 16N RGE 16E IS WASTE AND SEEPAGE.

**Period of Use:** APRIL 1 TO SEPTEMBER 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	20.00		NESW	26	16N	16E	FERGUS
2	14.00		SENW	26	16N	16E	FERGUS

**Total:** 34.00

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

**Water Right Number:** 41S 3203-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HELEN K BREVIG  
% CLARK BREVIG  
676 QUARRY VIEW LANE  
LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1930

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 40.00 GPM

**\*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:** SPRING, UNNAMED TRIBUTARY OF JUDITH RIVER

**Source Type:** GROUNDWATER

**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	26	16N	16E	FERGUS

**Period of Diversion:** DECEMBER 1 TO MARCH 1

**Diversion Means:** DITCH

**Period of Use:** DECEMBER 1 TO MARCH 1

**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			W2	26	16N	16E	FERGUS