

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

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CLAIMANTS: Billy D. Butler; Gary D. Butler; Karla Butler;  
Tommy D. Butler

CASE 41S-0741-R-2024  
41S 135207-00  
41S 135208-00

OBJECTOR: Montana Attorney General

**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. Claimants Billy D. Butler, Gary D. Butler, Karla Butler, and Tommy D. Butler (the Butlers) were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims 41S 135207-00 and 41S 135208-00:

**41S 135207-00 and 41S 135208-00:**

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 0 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.
- THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-212 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINTS OF DIVERSION MAY BE INCORRECT. THE LOCATIONS OF THE HEADGATES CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating “the DNRC met with one claimant on September 19, 2024.” (Doc.<sup>1</sup> 4.00). The Memorandum did not indicate with whom the DNRC met. Ms. Bluhm indicated that she reviewed abstracts, the Fergus County Water Resource Survey, and an aerial photo to prepare the Memorandum. Photos were attached to the Memorandum.

- **41S 135207-00:** Ms. Bluhm reported that the Claimant told the DNRC that “there was a ditch at one point, but the tubing and ditch was moved.” Ms. Bluhm did not find evidence of irrigation and recommended claim 41S 135207-00 be dismissed.
- **41S 135208-00:** Ms. Bluhm reported that the Claimant explained that there are 4.00 acres of irrigation on the NENESW of Section 24, T15N, R19E, but provided no historical evidence of that irrigation. This Water Master took this information to mean that the referenced 4.00 acres is present-day irrigation. Ms. Bluhm stated that the land is irrigable, but the aerial photo and the Fergus County Water Resources Survey do not support historical irrigation at the claimed place of use. Ms. Bluhm recommended claim 41S 135208-00 be dismissed.

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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.

3. A deadline was set to determine if Claimants Billy D. Butler, Gary D. Butler, Karla Butler, and Tommy D. Butler agreed or disagreed with the recommended dismissal of claims 41S 135207-00 and 41S 135208-00. On November 8, 2024, Tommy D. Butler, Karla Butler, and Billy D. Butler filed a statement:

**WATER MASTER**

Claimants Billy D. Butler, Gary D. Butler, Karla Butler, and Tommy D. Butler

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41S 135207-00  
41S 135208-00

We the claimants disagree with the proposed dismissal of the above claims. These claims were legally applied for, and filing fees were paid and water rights granted to our parents. New filing fees imposed by former Governor Schweitzer Administration have been paid, also taxes on the increased real estate values.

Years of drought and lower snow fall amounts has made the use of these water rights without the proper infrastructure not usable. Ditches need to be retrenched.

We ask that you do not deny the next future generation of right holders the use of these water rights.

Sincerely Claimants,

Gary D. Butler (Deceased)

*Tommy D. Butler*  
*Karla Butler*  
*Billy D. Butler*

**FILED**  
NOV 08 2024  
Montana Water Court

4. As issue remarks implicating abandonment or nonperfection remained unresolved, the State of Montana, Attorney General was joined as a necessary party to these proceedings. (Doc. 6.00).

5. A Stipulation was filed on January 22, 2025 in which the parties agreed claims 41S 135207-00 and 41S 135208-00 have been abandoned and should be dismissed. (Doc. 7.00)

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to resolve all issue remarks before a final decree. §85-2-247, MCA. Under §-85-2-248(6), MCA, when an issue remark cannot be resolved through an informal meeting between the claimant and the DNRC, the Water Court must schedule proceedings to address and resolve the remark. These proceedings must include the DNRC. Section 85-2-248(7), MCA, requires joinder of the State of Montana, through the Attorney General, as a necessary party when the unresolved issues include nonperfection or abandonment.

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.

RECOMMENDATION

1. Claims 41S 135207-00 and 41S 135208-00 should be dismissed.  
Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

Montana DOJ  
Terisa Oomens, Agency Legal Counsel  
Agency Legal Services Bureau  
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Helena, MT 59620-7375  
Phone: 406-444-4303  
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**Service via USPS Mail:**

Billy D. Butler  
1889 Moulton Rd  
Hilger, MT 59451

Karla Butler  
Tommy D. Butler  
7499 Salt Creek Rd  
Hilger, MT 59451-9798

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

**Water Right Number:** 41S 135207-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:**

BILLY D BUTLER  
1889 MOULTON RD  
HILGER, MT 59451

KARLA BUTLER  
7499 SALT CREEK RD  
HILGER, MT 59451-9798

TOMMY D BUTLER  
7499 SALT CREEK RD  
HILGER, MT 59451

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** PIKE CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 41S 135208-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:**

BILLY D BUTLER  
1889 MOULTON RD  
HILGER, MT 59451

GARY D BUTLER  
1011 6TH AVE N  
LEWISTOWN, MT 59457

KARLA BUTLER  
7499 SALT CREEK RD  
HILGER, MT 59451-9798

TOMMY D BUTLER  
7499 SALT CREEK RD  
HILGER, MT 59451

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** UNNAMED TRIBUTARY OF BIG SPRING CREEK, EAST FORK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.