

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
01/09/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0743-R-2024
Stern, Anika
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANT: Susan R. Butler

CASE 41S-0743-R-2024
41S 126203-00

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, 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. Susan R. Butler (Butler) is the record owner of irrigation claim 41S 126203-00.
2. Claim 41S 126203-00 was decreed with DNRC issue remarks:
 - THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 160.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.
 - FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
 - THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
 - THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
 - USDA AERIAL PHOTOGRAPH NO(S).30027-178-69 AND 30027-178-71 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
3. Butler was ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claim 41S 126203-00.
4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on November 20, 2024. (Doc.¹ 3.00). The Memorandum states Ms. Bluhm spoke with Butler on October 15, 2024. Ms. Bluhm reports she reviewed the abstract, information in the claim file, the Fergus County Water Resources Survey, and an aerial photograph to prepare the Memorandum; a map and proposed abstract were attached to the Memorandum.

Ms. Bluhm confirmed the point of diversion at the claimed location. Additionally, Ms. Bluhm indicated that she was able to confirm 8.00 acres irrigated and recommended the flow rate be reduced to 136.00 gallons per minute (gpm), consistent with the DNRC flow rate guideline. The DNRC recommendations are as follows:

Flow Rate: 136.00 GPM 1.14 CFS

Maximum Acres: 8.00 30.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	8.00	26.00	W2SE	19	20N	18E	FERGUS
2	2.00	5.00	W2NE	30	20N	18E	FERGUS
Total:	30.00	8.00					

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

5. An Order was issued to determine if Claimant Susan R. Butler agreed or disagreed with Ms. Bluhm's recommendations. (Doc. 4.00). The Order indicating indicated that if nothing were filed by Butler by the deadline, this Water Master would conclude Butler agrees with Ms. Bluhm's recommendations. Nothing was filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim. Section 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.

RECOMMENDATIONS

1. The following modifications should be made to claim 41S 126203-00:

Flow Rate: 136.00 GPM 1.14 CFS

Maximum Acres: 8.00 30.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	8.00	26.00	W2SE	19	20N	18E	FERGUS
2	2.00	5.00	W2NE	30	20N	18E	FERGUS
Total:	30.00	8.00					

2. The issue remarks should be removed from claim 41S 126203-00.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Susan R. Butler
156 3 Mile Rd
Hilger, MT 59451-8000

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

Water Right Number: 41S 126203-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SUSAN R BUTLER
156 3 MILE RD
HILGER, MT 59451-8000

Priority Date: OCTOBER 1, 1914

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 136.00 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 8.00

Source Name: SALT CREEK

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		NENWNE	30	20N	18E	FERGUS

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 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	6.00		W2SE	19	20N	18E	FERGUS
2	2.00		W2NE	30	20N	18E	FERGUS
Total:	<u>8.00</u>						