

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: Michelle Dover; David Dover

**CASE 41S-0819-R-2024**

41S 5007-00

41S 140025-00

**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. Michelle and David Dover (the Claimants) are the record owners of claims 41S 5007-00 and 41S 140025-00.

2. Claims 41S 5007-00 and 41S 140025-00 were decreed with DNRC issue remarks:

#### **41S 5007-00:**

- 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). 30027-178-94 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 9.66 TIMES THE CAPACITY OF THE RESERVOIR.
- THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.
- RESERVOIR RECORD 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...

#### **41S 140025-00:**

- THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 55.00 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 JUDITH BASIN COUNTY WATER RESOURCES SURVEY ( 1963 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-16 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. The Dovers were ordered to meet with a DNRC employee to address the unresolved issue remarks. (Doc.<sup>1</sup>1.00).

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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.

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating Claimant David Dover met with the DNRC. (Doc.<sup>2</sup> 3.00). Ms. Bluhm indicated she reviewed the Judith Basin County Water Resource Survey and an aerial photo to prepare the Memorandum.

5. **41S 5007-00:** Using information provided by Claimant David Dover and a 1979 aerial photograph, Ms. Bluhm identified all 28.00 acres claimed as historically irrigated at the claimed place of use. Although Ms. Bluhm only referenced a datapoint post-dating the issue remark referencing the 1970 Fergus County Water Resources Survey, she recommended removing both place of use issue remarks placed on the claim by the DNRC.

Regarding the volume issue remark, Ms. Bluhm stated:

The claimed volume of the reservoir is 110.16 AC-FT. After speaking to the claimant who provided the DNRC with the accurate measurements of the reservoir, the DNRC estimated that the holding capacity of the reservoir is 25.05 AC-FT. Following the DNRC's guideline of 2.5 fills per year the DNRC estimated the volume to be 62.70 AC-FT as noted in the calculation below.

Surface acres x Depth x 0.4= Capacity (AC-ft)  
 2.85 acres x 22 x 0.4 = 25.08  
 25.08 x 2.5 (DNRC's guideline for fills per year) = 62.7 AC-ft

It appears the following modifications are appropriate for claim 41S 5007-00:

Volume: 62.70 110.16 AC-FT

\*Reservoir: ONSTREAM

	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		SENWNW	18	12N	14E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 22.00 40.00 FEET

Surface Area: 2.85 ACRES

Capacity: 25.05 11.40-ACRE-FEET

~~THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.~~

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<sup>2</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

6. **41S 140025-00:** Ms. Bluhm indicated that she was unable to identify any historical irrigation at the claimed place of use, and she recommended claim 41S 140025-00 be dismissed. Additionally, Ms. Bluhm indicated Claimant David Dover agrees with the proposed dismissal.

7. An Order was issued to determine if Claimants Michelle Dover and David Dover agreed or disagreed with proposed modifications to claim 41S 5007-00 and the proposed dismissal of claim 41S 40025-00. The Order indicated if nothing were filed by the January 17, 2025 deadline, this Water Master would conclude the Dovers agree with the recommended modifications to claim 41S 5007-00 and the proposed dismissal of claim 41S 140025-00, and this Master's Report would be issued making the recommendations. Nothing was filed.

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed 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.

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 period of diversion and reservoir record issue remarks decreed on claim 41S 5007-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

## RECOMMENDATIONS

1. Claim 41S 5007-00 should be modified as follows:

Volume: 82.70 ~~110.16~~ AC-FT

\*Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWNW	18	12N	14E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 22.00 ~~10.00~~-FEET

Surface Area: 2.85 ACRES

Capacity: 25.05 ~~11.40~~-ACRE-FEET

~~THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRG.~~

The issue remarks should be removed.

2. Claim 41S 40025-00 should be dismissed.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Michelle Dover  
David Dover  
3741 Stonehaven Rd  
Buffalo, MT 59418

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

**Water Right Number:** 41S 5007-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DAVID DOVER  
3741 STONEHAVEN RD  
BUFFALO, MT 59418  
  
MICHELE DOVER  
3741 STONEHAVEN RD  
BUFFALO, MT 59418

**Priority Date:** DECEMBER 31, 1965

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

**Volume:** 62.70 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 28.00

**Source Name:** COYOTE 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		SENWNW	18	12N	14E	JUDITH BASIN

**\*Period of Diversion:** APRIL 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWNW	18	12N	14E	JUDITH BASIN

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 22.00 FEET

**Surface Area:** 2.85 ACRES

**Capacity:** 25.05 ACRE-FEET

**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	8.00		NWNENW	18	12N	14E	JUDITH BASIN

2	14.00	S2SESW	7	12N	14E	JUDITH BASIN
3	3.00	S2SWSW	7	12N	14E	JUDITH BASIN
4	3.00	NENWNW	18	12N	14E	JUDITH BASIN
<b>Total:</b>	<u>28.00</u>					

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

**Water Right Number:** 41S 140025-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** DAVID DOVER  
3741 STONEHAVEN RD  
BUFFALO, MT 59418

MICHELE DOVER  
3741 STONEHAVEN RD  
BUFFALO, MT 59418

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** MARTIN COULEE

**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.