

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: La Verne B. Gremaux; Darlene J. Marushack;  
Joseph P. Marushack

CASE 41S-0942-R-2024  
41S 135299-00  
41S 135300-00  
41S 135301-00

**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. La Verne B. Gremaux is the record owner of claim 41S 135299-00. Claim 41S 135300-00 is co-owned by La Verne B. Gremaux, Darlene J. Marushack, Joseph P. Marushack (Claimants). Darlene J. Marushack, and Joseph P. Marushack co-own claim 41S 135301-00.

2. Claims 41S 135299-00, 41S 135300-00, and 41S 135301-00 were decreed with DNRC issue remarks:

**41S 135299-00:**

- 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.
- 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.

**41S 135300-00:**

- 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). 30027-278-22 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THE DNRC REPORT DATED 11/03/2000 STATES THAT THE RANGE IN THE LEGAL DESCRIPTION FOR PARCEL NO. 1 SHOULD BE CHANGED TO 17E.

**41S 135301-00:**

- 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). 30027-278-22 , DATED 09/25/1979 , 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 Claimants were ordered to meet with a DNRC employee to address the unresolved issue remarks.

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating Claimant La Verne B. Gremaux met with the DNRC and counsel for Darlene J.

Marushack and Joseph P. Marushak also met with the DNRC. (Doc.<sup>1</sup> 7.00). Ms. Bluhm indicated she reviewed the Fergus County Water Resource Survey and aerial photos to prepare the Memorandum.

5. **41S 135299-00** (La Verne B. Gremaux): Ms. Bluhm indicated she reviewed the Fergus County Water Resource Survey and aerial photos to prepare the Memorandum.

6. **41S 135300-00** (La Verne B. Gremaux, Darlene J. Marushack, and Joseph P. Marushack): Darlene J. Marushack and Joseph P. Marushack filed a withdrawal of interest for claim 41S 135300-00, indicating:

This claim was either not perfected or has not been used for many decades. We are withdrawing our interest in this statement of claim.

Ms. Bluhm recommended claim 41S 135300-00 “be withdrawn per claimant request.”

La Verne B. Gremaux did not file a withdrawal for claim 41S 135300-00; it is unclear if La Verne B. Gremaux agrees with the recommended dismissal.

7. **41S 135301-00** (Darlene J. Marushack and Joseph P. Marushack): Darlene J. Marushack and Joseph P. Marushack filed a withdrawal of interest for claim 41S 135301-00, indicating:

This claim was either not perfected or has not been used for many decades. We are withdrawing our interest in this statement of claim.

8. An Order was issued setting a deadline for Claimant La Verne B. Gremaux to file a Statement agreeing or disagreeing that claim 41S 135300-00 be dismissed. The Order indicated that if nothing were filed by the deadline, a Master’s Report recommending dismissal of claim 41S 135300-00 would be issued. The following language was included in the Order:

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.

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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.

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. The point of diversion issue remark decreed on claim 41S 135299-00 indicates that if no objections are filed, the remark will be removed with no changes to the claim; no objections were filed and the remark can be removed

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41S 135299-00.
2. Claims 41S 135300-00 and 41S 135301-00 should be dismissed.  
Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

La Verne B. Gremaux  
505 Plum Creek Road  
Lewistown, MT 59457

**Service Via Electronic Mail:**

Abigail R. Brown  
Diana J. Abbott  
Parsons Behle & Latimer  
201 E. Broadway St.  
P.O. Box 104  
Helena, MT 59624  
Main: 406-410-5022  
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AbbyBrown@parsonsbehle.com  
dabbott@parsonsbehle.com  
ecf@parsonsbehle.com

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

**Water Right Number:** 41S 135299-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** LA VERNE B GREMAUX  
505 PLUM CREEK ROAD  
LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1928

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FURROW

**Flow Rate:** 34.00 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:** 2.00

**Source Name:** DUCK 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		NENWSW	9	17N	17E	FERGUS

**Period of Diversion:** MAY 1 TO OCTOBER 31

**Diversion Means:** PUMP

**Period of Use:** MAY 1 TO OCTOBER 31

**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	2.00		SESWNW	9	17N	17E	FERGUS

**Total:** 2.00

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

**Water Right Number:** 41S 135300-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** **DISMISSED**

**Owners:**

LA VERNE B GREMAUX  
505 PLUM CREEK ROAD  
LEWISTOWN, MT 59457

DARLENE J MARUSHACK  
PO BOX 3733  
LEWISTOWN, MT 59457-3733

JOSEPH P MARUSHACK  
PO BOX 3733  
LEWISTOWN, MT 59457-3733

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** WARM SPRING 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 135301-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** DARLENE J MARUSHACK  
PO BOX 3733  
LEWISTOWN, MT 59457-3733

JOSEPH P MARUSHACK  
PO BOX 3733  
LEWISTOWN, MT 59457-3733

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** SPRING, UNNAMED TRIBUTARY OF WARM SPRING CREEK

**Source Type:** GROUNDWATER

**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.