

Montana Water Court
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FILED
01/13/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0988-R-2024
Stern, Anika
3.00

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

CLAIMANT: Heath Properties

CASE 41S-0988-R-2024
41S 101576-00

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. Claimant Heath Properties is the record owner of irrigation claim 41S 101576-00.
2. Claim 41S 101576-00 was decreed with DNRC issue remarks:
 - FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
 - THE FERGUS COUNTY WATER RESOURCES SURVEY(1970)APPEARS TO INDICATE 4.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
 - SOURCE NAME 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.
3. Heath Properties was ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claim 41S 101576-00.
4. On January 7, 2025, DNRC Water Resources Specialist Carli Bluhm filed a Memorandum stating additional information is not required from Claimant Heath Properties and “The DNRC identified all claimed 16.20 acres of irrigation from the historical sources.” (Doc.¹ 2.00). Ms. Bluhm recommended removal of the acres irrigated/place of use and flow rate issue remarks.

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.
3. The source name issue remark decreed on claim 41S 101576-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

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

RECOMMENDATION

1. The issue remarks should be removed from claim 41S 101576-00.
An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Heath Properties
151 W Industry Ct, Ste 8
Deer Park, NY 11729

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

Water Right Number: 41S 101576-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HEATH PROPERTIES
151 W INDUSTRY CT
STE 8
DEER PARK, NY 11729

Priority Date: JUNE 1, 1882

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 228.00 GPM

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 16.20

***Source Name:** UNNAMED TRIBUTARY OF BIG SPRING CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS BUTTERMILK CREEK

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		NWNESE	17	15N	18E	FERGUS

Period of Diversion: MAY 1 TO SEPTEMBER 15

Diversion Means: HEADGATE

Period of Use: MAY 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	16.20		W2E2NE	17	15N	18E	FERGUS

Total: 16.20