

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

FILED
07/30/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0023-R-2024
Block, Nathaniel
13.00

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

CLAIMANT: Casino Creek Enterprises

CASE 41S-0023-R-2024
41S 135282-00

OBJECTORS: Butcher Home Place LLC; Kirk Donsbach;
Bobbe J. Donsbach-Stulc; Elaine Meier; Gene
Meier; Julie Weeden; Monte Weeden; Weeden
Ranch LLC

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

The above-captioned claim appeared in the Preliminary Decree for the Judith River (Basin 41S) with the following issue remarks:

Claim 41S 135282-00:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41S 100150-00, 41S 100151-00, 41S 100152-00, 41S 100153-00, 41S 135282-00.

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 19.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-178-57 , DATED 09/18/1979 , APPEARS TO INDICATE 26.30 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

Butcher Home Place LLC, Kirk Donsbach, Bobbe J. Donsbach-Stulc, Elaine Meier, Gene Meier, Julie Weeden, Monte Weeden, and Weeden Ranch LLC (“Crowley Ditch Users”) filed objections to the claim. The claim was consolidated into Case 41S-0023-R-2024 on February 22, 2024. On August 28, 2024, a Stipulation was filed (Doc.¹ 9.00) and on December 9, 2024 a Memorandum to Resolve Issue Remarks was filed (Doc. 11.00) by claimant Casino Creek Enterprises.

FINDINGS OF FACT

1. The Stipulation proposes adding the following remarks to claim 41S 135282-00: THIS WATER RIGHT IS SUBJECT TO CHANGE APPLICATIONS 41S 30000873 (2005) AND 41S 30064275 (2015).

THIS WATER RIGHT IS FURTHER SUBJECT TO AN AGREEMENT ENTERED INTO ON OCTOBER 15, 2004, UNDER WHICH THE CLAIMANT OF THIS WATER RIGHT ABANDONED ALL RIGHTS IN THE CROWLEY DITCH AND THE CROWLEY DITCH’S APPURTENANCES IN EXCHANGE FOR 1.94 CFS AND 63.9 ACRE-FEET TRANSFERRED FROM THE CROWLEY DITCH TO CLAIMANT FOR INDUSTRIAL USE ONLY, SPECIFICALLY FOR AN AGGREGATE WASH PLANT FACILITY, BETWEEN APRIL 15TH TO OCTOBER 15TH OF EACH YEAR, SUBJECT TO FURTHER CONDITIONS EXPRESSED IN THE OCTOBER 15, 2004, AGREEMENT, AND

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

INCORPORATED INTO AN AGREEMENT ON FILE WITH THE WATER COURT IN CASE NO. 41S-0023-R-2024.

A copy of the October 15, 2004, Agreement was attached to the Stipulation.

2. Pursuant to the Memorandum to Resolve Issue Remarks claim 41S 135282-00 should be modified as follows:

Maximum Acres: ~~38.00~~ **25.5**

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	30.00	19.6	SESE	32	16N	18E	FERGUS
2	8.00	5.9	W2SWSW	33	16N	18E	FERGUS
Total:	38.00	25.5					

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, -231(2), MCA.

CONCLUSIONS OF LAW

1. The remarks discussed in Finding of Fact #1 should be added to the claim. Adding the remarks resolves the objections to the claim.

2. The maximum acres and place of use should be modified as described in Finding

of Fact #2. The modifications as well as the information and evidence contained in the Memorandum resolves the issue remarks.

RECOMMENDATION

1. Upon review the record in this case, the claim should be modified as discussed above. The objections should be considered resolved by the addition of the remarks discussed in Finding of Fact #1.

A Post Decree Abstract of Water Right Claim is attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

John E. Bloomquist
Besty R. Story
Parsons Behle & Latimer
jbloomquist@parsonsbehle.com
bstory@parsonsbehle.com
ecf@parsonsbehle.com
(Attorney for Objectors)

Oliver J. Urick
Urlick Law Firm PLLC
ourick@uricklawfirm.com
(Attorney for Casino Creek Enterprises)

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

Water Right Number: 41S 135282-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: CASINO CREEK ENTERPRISES
PO BOX 3501
LEWISTOWN, MT 59457-3501

Priority Date: APRIL 29, 1882

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.44 CFS

***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: 25.50

Source Name: BURNETT 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		SWNWSW	33	16N	18E	FERGUS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 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	19.60		SESE	32	16N	18E	FERGUS
2	5.90		W2SWSW	33	16N	18E	FERGUS

Total: 25.50

Remarks:

THIS WATER RIGHT IS FURTHER SUBJECT TO AN AGREEMENT ENTERED INTO ON OCTOBER 15, 2004, UNDER WHICH THE CLAIMANT OF THIS WATER RIGHT ABANDONED ALL RIGHTS IN THE CROWLEY DITCH AND THE CROWLEY DITCH'S APPURTENANCES IN EXCHANGE FOR 1.94 CFS AND 63.9 ACRE-FEET TRANSFERRED FROM THE CROWLEY DITCH TO CLAIMANT FOR INDUSTRIAL USE ONLY, SPECIFICALLY FOR AN AGGREGATE WASH PLANT FACILITY, BETWEEN APRIL 15TH TO OCTOBER 15TH OF EACH YEAR, SUBJECT TO FURTHER CONDITIONS EXPRESSED IN THE OCTOBER 15, 2004, AGREEMENT, AND INCORPORATED INTO AN AGREEMENT ON FILE WITH THE WATER COURT IN CASE NO. 41S-0023-R-2024.

THIS WATER RIGHT IS SUBJECT TO CHANGE APPLICATIONS 41S 30000873 (2005) AND 41S 30064275 (2015).