

Montana Water Court
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FILED
06/18/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0693-R-2024
Stern, Anika
16.00

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

CLAIMANTS: Ronetta L. Blackburn; Christopher Theodor
OBJECTOR: Montana Attorney General
NOTICE OF INTENT TO APPEAR: Crowley Ditch Co.

CASE 41S-0693-R-2024
41S 154050-00
41S 154051-00
41S 154052-00

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. Ronetta L. Blackburn and Christopher Theodor (Claimants) are the record owners of claims 41S 154050-00, 41S 154051-00, and 41S 154052-00.

2. Claims 41S 154050-00, 41S 154051-00, and 41S 154052-00 were decreed with Montana Department of Natural Resources (DNRC) issue remarks noting potential factual or legal issues identified by the DNRC during its examination of the claims:

41S 154050-00:

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 100.00 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 FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-212 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON BIG SPRING CREEK WITH A PRIORITY DATE PREDATING CASE NO 319, FERGUS COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41S 154051-00:

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

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41S 154051-00, 41S 154052-00 .

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-212 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41S 154052-00:

THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

THE WATER COURT FINDS NO LEGAL BASIS FOR THIS PURPOSE TO BE CONSIDERED A BENEFICIAL USE OR AN APPROPRIATION OF WATER.

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41S 154051-00, 41S 154052-00 .

THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIMS EXAMINATION RULES.

3. Crowley Ditch Co. filed a Notice of Intent to Appear (NOIA) as to claim 41S 154050-00, stating:

6. State the changes that you think should be made to this claim and why.

Crowley Ditch Co. has water rights on Big Spring Creek that may be impacted by any changes made to this water right. The purpose of this NOIA is to monitor and participate in the resolution of the DNRC Issue Remarks.

The June 24, 2024 Order Consolidating, Order on Status of Case, and Order Setting Deadlines Pursuant to Section 85-2-248(5), MCA indicated that resolution of the issue remarks decreed on claim 41S 154050-00 might eliminate the need to further address the NOIA and if needed, a deadline would be set later for Crowley Ditch Co. to address remaining issue remarks. (Doc.¹1.00).

4. The Claimants were ordered to meet with a DNRC employee to address the issue remarks. Ultimately, the Claimants disagreed with DNRC Water Resource Specialist Carli Bluhm’s recommendation to dismiss claims 41S 154050-00, 41S 154051-00, and 41S 154052-00, and the State of Montana, Attorney General (State of Montana) was joined as a necessary party to the proceedings.

5. The Claimants and the State of Montana filed a Stipulation for Resolution of Issue Remarks (Stipulation) on May 27, 2025. (Doc. 15.00). Pursuant to the Stipulation, the parties request claim 41S 154050-00 be dismissed as it has been

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

abandoned. Pursuant to the Stipulation, claim 41S 154051-00 should be retained as decreed, the parties reference 1975 and 1979 USDA aerial photographs showing “hydration present.” Pursuant to the Stipulation, the parties agreed claim 41S 154052-00 be dismissed as “aesthetic purposes” is not a beneficial use or appropriation of water.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to resolve the issues raised by each issue remark. 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 Water Court is required to resolve all issue remarks before a final decree. §85-2-247, MCA. Under §-85-2-248(6), MCA, when an issue remark cannot be resolved through an informal meeting between the claimant and the DNRC, the Water Court must schedule proceedings to address and resolve the remark. These proceedings must include the DNRC. Section 85-2-248(7), MCA, requires joinder of the State of Montana, through the Attorney General, as a necessary party when the unresolved issues include nonperfection or abandonment.

4. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the party’s knowledge the factual contentions contained within the stipulation are supported by evidence.

Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” *United States of*

America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees, Case 42B-1, ¶ 3 at p. 14, (Order Denying Motion June 27, 2014).

Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claim.

RECOMMENDATIONS

1. Claims 41S 154050-00 and 41S 154052-00 should be dismissed.
 2. Crowley Ditch Co.'s Notice of Intent to Appear filed for claim 41S 154050-00 should be dismissed as moot.
 3. The issue remarks should be removed from claim 41S 154051-00.
- Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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

Water Right Number: 41S 154050-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: RONETTA L BLACKBURN
PO BOX 1001
STEINHATCHEE, FL 32359-1001

CHRISTOPHER THEODOR
PO BOX 1001
STEINHATCHEE, FL 32359-1001

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: BIG SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

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 154051-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RONETTA L BLACKBURN
PO BOX 1001
STEINHATCHEE, FL 32359-1001

CHRISTOPHER THEODOR
PO BOX 1001
STEINHATCHEE, FL 32359-1001

Priority Date: AUGUST 31, 1959

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 170.00 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: 10.00

Source Name: BIG SPRING 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		N2SE	31	15N	19E	FERGUS

Period of Diversion: MARCH 31 TO NOVEMBER 1

Diversion Means: PUMP

POINT OF DIVERSION IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION. TRANSITORY POINT OF DIVERSION: ALL ALONG SOURCE.

Period of Use: MARCH 31 TO NOVEMBER 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	10.00		N2SE	31	15N	19E	FERGUS

Total: 10.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

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

Water Right Number: 41S 154052-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: RONETTA L BLACKBURN
PO BOX 1001
STEINHATCHEE, FL 32359-1001

CHRISTOPHER THEODOR
PO BOX 1001
STEINHATCHEE, FL 32359-1001

Priority Date:

Type of Historical Right:

Purpose (Use): UNKNOWN

Purpose (Use): UNKNOWN

Flow Rate:

Volume:

Source Name: BIG SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.