

Montana Water Court  
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**FILED**  
06/17/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41S-0963-R-2024  
Stern, Anika  
7.00

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

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CLAIMANT: Hannah Ranch LP

NOTICE OF INTENT TO APPEAR: Jamie Gilbert;  
Lisa Jo Gilbert

**CASE 41S-0963-R-2024**  
41S 41540-00  
41S 119059-00  
41S 119060-00

**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. Hannah Ranch LP (Hannah Ranch) is the record owner of irrigation claims 41S 41540-00, 41S 119059-00, and 41S 119060-00.

2. Claims 41S 41540-00, 41S 119059-00, and 41S 119060-00 were decreed with Montana Department of Natural Resources (DNRC) issue remarks noting potential factual or legal issues identified during examination of the claims.

3. Jamie Gilbert and Lisa Jo Gilbert (the Gilberts), Limited Partners of Hannah Ranch, filed Notices of Intent to Appear for each of the claims.

4. On June 3, 2025, Hannah Ranch filed its Motion to Resolve Case, addressing the issue remarks decreed on the claims in Case 41S-0963-R-2024; the Affidavit of Jamie Gilbert (Exhibit A), an aerial photo of the point of diversion for claims 41S 119059-00 (Exhibit B), and proposed abstracts were attached to the June 3, 2025 filing. (Doc.<sup>1</sup> 6.00). The filing notes that the Gilberts agree their Notices of Intent to Appear will be resolved if the modifications proposed in the June 3, 2025 filing are implemented.

#### **Claim 41S 41540-00:**

5. Claim 41540-00 was decreed with issue remarks:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 89.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-70 , DATED 09/25/1979 , APPEARS TO INDICATE 96.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON LITTLE TROUT CREEK WITH A PRIORITY DATE PREDATING CASE NO 756, 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.

6. According to the June 3, 2025 filing, the following modifications should be made to claim 41S 41540-00, addressing the maximum acres/place of use issue remarks:

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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.

Maximum Acres:		116.00	96.00
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	93.60	75.00	E2 SE 15 13N 16E FERGUS
2	38.00		SWNE 15 13N 16E FERGUS
3	2.40	5.00	SWSWSW 14 13N 16E FERGUS
Total:		116.00	96.00

Hannah Ranch explains the proposed modifications as follows:

Claim 41S 41540-00 currently describes a place of use of 116 acres. However, the place of use is more accurately described as the 96.00 acres identified by the DNRC in a September 25, 1979 aerial photograph. Slightly fewer acres (89) were identified as being irrigated at the time the Water Resources Survey was conducted, however the Water Resources Survey was completed on April 23, 1970, early in the irrigating season and likely before the property was fully irrigated.

(Doc. 6.00). The decreed flow rate is within the parameters of the prima facie Statement of Claim and its attachments, and no party objected.

Claim 41S 41540-00 was also decreed with a notice-type priority date issue remark, it does not require further proceedings.

#### **Claim 41S 119059-00:**

7. Claim 41S 119059-00 was decreed with issue remarks:

- THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 230.00 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 TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 119059-00, 41S 119060-00.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-70 AND 30027- 278-72 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON UNNAMED TRIBUTARY OF LITTLE TROUT CREEK WITH A PRIORITY DATE PREDATING CASE NO 756, 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.

8. According to the June 3, 2025 filing, the following modifications should be made to claim 41S 119059-00, addressing issue remarks:

Flow Rate: 6.37 CFS

CMFI: THE TOTAL COMBINED FLOW RATE DIVERTED UNDER CLAIMS 41S 119059-00 AND 41S 119060-00 SHALL NOT EXCEED 400 MINERS' INCHES (10 CFS).

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	SENWSW	SWSWNW	28	13N	18E	FERGUS

Claims 41S 119059-00 and 41S 119060-00 are both based on the same July 5, 1892 Ida Clifford 400 miner's inches (10.00 cfs) appropriation of water – together they overclaimed the appropriation. Hannah Ranch proposed the over-filing issue be addressed by adding the following information remark to claims 41S 119059-00 and 41S 119060-00: "THE TOTAL COMBINED FLOW RATE DIVERTED UNDER CLAIMS 41S 119059-00 AND 41S 119060-00 SHALL NOT EXCEED 400 MINERS' INCHES (10 CFS)."

Hannah Ranch explains that no modifications are needed to the maximum acres or place of use for claim 41S 119059-00:

The place of use and maximum acres for this claim do not require modification. Affidavit of Jamie Gilbert (Exhibit A). Neither the Water Resources Survey nor the 1979 aerial photograph reviewed by DNRC accurately represents the historical place of use for this right. The Water Resources Survey was conducted April 21 of 1970, very early in the irrigating season and before the property would have been fully irrigated. Likewise, the September 25, 1979 aerial photograph was taken very late in the irrigating season, likely after irrigation had ceased on these acres. The place of use should remain as claimed and supported by the affidavit of Mr. Gilbert.

(Doc. 6.00).

Claim 41S 119059-00 was also decreed with a notice-type priority date issue remark, it does not require further proceedings.

#### **Claim 41S 119060-00:**

9. Claim 41S 119060-00 was decreed with issue remarks:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 119059-00, 41S 119060-00.

- THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 69.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-70 , DATED 09/25/1979 , APPEARS TO INDICATE 100.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON UNNAMED TRIBUTARY OF LITTLE TROUT CREEK WITH A PRIORITY DATE PREDATING CASE NO 756, 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.

10. According to the June 3, 2025 filing, the following modifications should be made to claim 41S 119060-00, addressing issue remarks:

Flow Rate: 4.93 CFS

CMFI: THE TOTAL COMBINED FLOW RATE DIVERTED UNDER CLAIMS 41S 119059-00 AND 41S 119060-00 SHALL NOT EXCEED 400 MINERS' INCHES (10 CFS).

Maximum Acres: 130.00 100.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	100.00	06.00	E2 NE	22	13N	18E	FERGUS
2	13.00		W2NESE	22	13N	18E	FERGUS
3	24.00		NWSE	22	13N	18E	FERGUS
4	4.00		NEGWSE	22	13N	18E	FERGUS
Total:	130.00	100.00					

Claims 41S 119059-00 and 41S 119060-00 are both based on the same July 5, 1892 Ida Clifford 400 miner's inches (10.00 cfs) appropriation of water – together they overclaimed the appropriation. Hannah Ranch proposed the over-filing issue be addressed by adding the following information remark to claims 41S 119059-00 and 41S 119060-00: "THE TOTAL COMBINED FLOW RATE DIVERTED UNDER CLAIMS 41S 119059-00 AND 41S 119060-00 SHALL NOT EXCEED 400 MINERS' INCHES (10 CFS)."

Hannah Ranch explains the proposed maximum acres/place of use modification as follows:

Claim 41S 119060-00 currently lists a place of use of 130 acres. However, the place of use is more accurately described as the 100 acres identified by the DNRC in a September 25, 1979 aerial photograph. Sixty-Nine acres were identified as being irrigated at the time the Water Resources Survey was conducted, however the Water Resources Survey was completed on April 23, 1970, early in the irrigating season and likely before the property was being fully irrigated.

(Doc. 6.00). The decreed flow rate is within the parameters of the prima facie Statement of Claim and its attachments, and no party objected.

Claim 41S 119060-00 was also decreed with a notice-type priority date issue remark, it does not require further proceedings.

### 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 factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. If it meets this standard, then the burden of proof shifts to the claimant to prove his or her claim's validity. An issue remark is weighed like any other evidence. When an issue remark is placed on a claim, "the information resulting in the issue remark and the issue remark *must be weighed against* the claimed water right." § 85-2-247(2), MCA (emphasis added). The Water Court shall review an issue remark "to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error." § 85-2-248(3), MCA. Determining whether the factual issues raised by an issue remark have been resolved requires the exercise of judicial discretion. *Id.*

4. The priority date issue remarks decreed on claims 41S 41540-00, 41S 119059-00, and 41S 119060-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

## RECOMMENDATIONS

1. Claim 41S 41540-00 should be modified as outlined in Finding of Fact 6, and the issue remarks should be removed.
2. Claim 41S 119059-00 should be modified as outlined in Finding of Fact 8, and the issue remarks should be removed.
3. Claim 41S 119060-00 should be modified as outlined in Finding of Fact 10, and the issue remarks should be removed.

Abstracts are attached.

## **ELECTRONICALLY SIGNED AND DATED BELOW.**

Service Via Electronic Mail:

Dana E. Pepper  
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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**JUDITH RIVER**  
**BASIN 41S**

**Water Right Number:** 41S 41540-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HANNAH RANCH LP  
127 BIG CARELESS CREEK RD  
JUDITH GAP, MT 59453

**Priority Date:** MAY 13, 1881

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.40 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:** 96.00

**Source Name:** LITTLE TROUT 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		SWSWSW	14	13N	16E	FERGUS

**Period of Diversion:** FEBRUARY 10 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Subdivision:** SEE REMARK FOR SUBDIVISION INFORMATION

**Period of Use:** FEBRUARY 10 TO SEPTEMBER 30

**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	93.60		E2	15	13N	16E	FERGUS
2	2.40		SWSWSW	14	13N	16E	FERGUS
<b>Total:</b>	96.00						



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

**Water Right Number:** 41S 119059-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HANNAH RANCH LP  
127 BIG CARELESS CREEK RD  
JUDITH GAP, MT 59453

**Priority Date:** JULY 5, 1892

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 6.37 CFS

THE TOTAL COMBINED FLOW RATE DIVERTED UNDER CLAIMS 41S 119059-00 AND 41S 119060-00 SHALL NOT EXCEED 400 MINERS' INCHES (10 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:** 168.00

**Source Name:** UNNAMED TRIBUTARY OF LITTLE TROUT 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		SENWSW	26	13N	16E	FERGUS

**Period of Diversion:** FEBRUARY 10 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** FEBRUARY 10 TO SEPTEMBER 30

**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	93.00		W2W2	23	13N	16E	FERGUS
2	12.00		E2E2	22	13N	16E	FERGUS
3	20.00		NENE	27	13N	16E	FERGUS
4	43.00		NWNW	26	13N	16E	FERGUS

**Total:** 168.00

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

**Water Right Number:** 41S 119060-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HANNAH RANCH LP  
127 BIG CARELESS CREEK RD  
JUDITH GAP, MT 59453

**Priority Date:** JULY 5, 1892

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.93 CFS

THE TOTAL COMBINED FLOW RATE DIVERTED UNDER CLAIMS 41S 119059-00 AND 41S 119060-00 SHALL NOT EXCEED 400 MINERS' INCHES (10 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:** 100.00

**Source Name:** UNNAMED TRIBUTARY OF TROUT 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		SESWSE	22	13N	16E	FERGUS

**Period of Diversion:** FEBRUARY 10 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** FEBRUARY 10 TO SEPTEMBER 30

**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	100.00		E2	22	13N	16E	FERGUS

**Total:** 100.00