

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

* * * * *

CLAIMANT: James F. Hannah

CASE 41S-0964-R-2024
41S 211795-00

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. James F. Hanna (Hannah) is the record owner of irrigation claim 41S 211795-00.
2. Claim 41S 211795-00 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 0.00 ACRES IRRIGATED.
 - USDA AERIAL PHOTOGRAPH NO(S). 30027-278-88 AND 30027-278-90 , DATED 09/15/1979 , 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.
 - FROM THE CLAIM AND DATA SUBMITTED TO THIS COURT, THE WATER COURT CANNOT DECREE THIS RIGHT WITHOUT FURTHER PRESENTATION OF EVIDENCE. THE POINT OF DIVERSION, PLACE OF USE, ACRES IRRIGATED AND VOLUME ARE ALL IN QUESTION. TO ASSURE THE ORDERLY ADMINISTRATION OF WATER RIGHTS, THE WATER COURTS WILL SET A HEARING TO DETERMINE THESE ISSUES IF NO OBJECTIONS ARE MADE.
 - THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S TEMPORARY PRELIMINARY DECREE ISSUED 05/17/1984.
 - CLAIM FILED LATE 10/20/1986 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.
 - 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. Claimant Hannah was ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claim 41S 211795-00. (Doc.¹ 1.00).
4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on January 28, 2025. (Doc. 3.00). The Memorandum indicated Ms. Bluhm spoke with Hannah on December 12, 2024. Ms. Bluhm reported she reviewed the Judith Basin County Water Resources Survey and aerial photographs and she did not identify irrigation; further, “the claimant explained that no irrigation took place on the property.” Ms. Bluhm recommended claim 41S 211795-00 be dismissed.

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

5. An Order was issued to determine if Claimant James F. Hannah agreed or disagreed with Ms. Bluhm's recommendation to dismiss claim 41S 211795-00. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimant James F. Hannah agrees with the recommended dismissal of claim 41S 211795-00 and a Master's Report would be issued recommending the claim be dismissed. 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. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATION

1. Claim 41S 211795-00 should be dismissed.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

James F. Hannah
509 Little Trout Creek Rd
Moore, MT 59464-9479

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

Water Right Number: 41S 211795-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Late Claim: B

Owners: JAMES F HANNAH
509 LITTLE TROUT CREEK RD
MOORE, MT 59464-9479

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF LITTLE TROUT 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.