

Montana Water Court
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FILED
02/26/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0965-R-2024
Stern, Anika
5.00

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

CLAIMANTS: Larry Hardwig; Denice Hardwig

CASE 41S-0965-R-2024
41S 216145-00

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. Denice Hardwig and Larry Hardwig (the Hardwigs) are the record owners of irrigation claim 41S 216145-00.
2. Claim 41S 216145-00 was decreed with DNRC issue remarks:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-94 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S TEMPORARY PRELIMINARY DECREE ISSUED 05/17/1984.
- CLAIM FILED LATE 06/28/1996 . 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.

3. The Hardwigs were ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claim 41S 216145-00.

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on January 17, 2025. (Doc.¹ 3.00). The Memorandum indicated Ms. Bluhm spoke with Larry Hardwig on December 16, 2024. Ms. Bluhm reported she reviewed a single aerial photograph to prepare the Memorandum. Ms. Bluhm stated:

During initial examination, the DNRC found 0 acres of irrigation. The claimant explained the original owner did not begin irrigation until 1975. The DNRC found no evidence of historical irrigation matching what is claimed.

Ms. Bluhm recommended claim 41S 216145-00 be dismissed.

5. An Order was issued to determine if Claimants Larry Hardwig and Denice Hardwig agreed or disagreed with Ms. Bluhm’s recommendation to dismiss claim 41S 216145-00. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimants Denice Hardwig and Larry Hardwig agree with the recommended dismissal of claim 41S 216145-00 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.

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

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 216145-00 should be dismissed.
An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Larry Hardwig
Denice Hardwig
PO Box 86
Moore, MT 59464

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

Water Right Number: 41S 216145-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Late Claim: B

Owners: DENICE HARDWIG
PO BOX 86
MOORE, MT 59464

LARRY HARDWIG
PO BOX 86
MOORE, MT 59464

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: ROSS FORK 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.