

Montana Water Court
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FILED
11/18/2025
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-2008-R-2025
Stern, Anika
4.00

MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER
BASIN 41S
PRELIMINARY DECREE

CLAIMANTS: James M. Forsythe; Kathryn J. Forsythe

OBJECTORS: James M. Forsythe; Kathryn J. Forsythe

CASE 41S-2008-R-2025
41S 8290-00

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 have 13 days from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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 M. Forsythe and Kathryn J. Forsythe ("the Forsythes") are the record owners of irrigation claim 41S 8290-00.

2. The Forsythes objected to claim 41S 8290-00 on October 11, 2022, indicating:

9. State the changes you think should be made to this claim and why. State the specific grounds and evidence on which the Objection is based. (Use additional paper if necessary.)

In 1970 Mr. Claude Jolliff filed the notice of appropriation for a dam built in 1965 along Little Casino Creek for the purposes of irrigation, watering of livestock, gardening, etc. The period of diversion/period of use for the dam should be recorded as year round, January 1-December 31. In addition, Means of diversion should be 'Dam' as Primary and 'Pump' as secondary.

DATED this 4 day of October, 2022.

 Kathryn Forsythe
SIGNATURE OF OBJECTOR OR OBJECTOR'S ATTORNEY

3. Ann K. Jolliff and Claude E. Jolliff filed the Statement of Claim for claim 41S 8290-00 on January 6, 1981. The Statement of Claim reflected a reservoir and pump as means of diversions:

9/9 ☒ Reservoir

Name No Name Stream Little Casino Creek
Tributary of Big Spring Creek

6. Point of Diversion: County Fergus Co
SE 1/4 NW 1/4 NW 1/4, Section 22, T 15 N, R 18 E
Lot _____, Block _____, Subdivision _____

7. Means of Diversion:
☒ Pump Capacity 100 gpm
☐ Headgate and ditch or pipe
☐ Flood and dike

Claim 41S 8290-00 was decreed without reference to the reservoir. The Forsythes' Objection to claim 41S 8290-00 on October 11, 2022, indicates "means of diversion should be "dam" as primary and "pump" as secondary.

4. As noted in the September 22, 2025 Order in this Case, the following modifications to claim 41S 8290-00 are supported by the record:

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENWNW	22	15N	18E	FERGUS

Period of Diversion: JULY 1 TO SEPTEMBER 30

Diversion Means: PUMP DAM **CMDI: PUMP IS A SECONDARY MEANS OF DIVERSION.**

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	SENWNW	22	15N	18E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Period of Use: JULY 1 TO SEPTEMBER 30

On October 2, 2025, the Forsythes filed a Response indicating agreement with the proposed means of diversion modification.

5. The January 6, 1981 Statement of Claim for claim 41S 8290-00, indicates the period of use for the irrigation use of the claim is July 15 to September 30:

12. Period(s) of use: July 1 15 to Sept 1 30
Month Day Month Day

The Forsythes objected to period of diversion/period of use “of the dam” noting that it should be “year round, January 1 – December 31.”

6. A deadline was set for the Forsythes to file evidence supporting the proposed January 1 to December 31 period of diversion and period of use for claim 41S 8290-00. (Doc.¹1.00).

7. To support the proposed January 1 to December 31 period of diversion and period of use, on October 2, 2025, the Forsythes filed the Notice of Appropriation filed by Claude E. Jolliff and Ann C. Jolliff. The Notice of Appropriation makes no reference to period of diversion and period of use, and the Forsythes state that “In the absence of a specified period of use, it is understood that the water right was intended for year-round use.” (Doc. 2.00).

No legal basis was provided by the Forsythes to substantiate the year-round use of claim 41S 8290-00. Additionally, claim 41S 8290-00 is a sprinkler irrigation claim, which would not be feasible during the winter months.

8. An Order was issued setting a deadline for the Forsythes to indicate whether the following proposed modification to claim 41S 8290-00 resolves their October 11, 2022 Objection:

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENWNW	22	15N	18E	FERGUS

Period of Diversion: JULY 1 TO SEPTEMBER 30

Diversion Means: PUMP **DAM** **CMDI: PUMP IS A SECONDARY MEANS OF DIVERSION.**
THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	SENWNW	22	15N	18E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Period of Use: JULY 1 TO SEPTEMBER 30

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

The Order indicated that if nothing were filed, it would be determined that the above-described modifications resolve the Forsythes' Objections to claim 41S 8290-0 and a Master's Report would be issued. (Doc. 3.00). Furthermore, the Order indicated if additional modifications were needed to resolve the Objection, documentation, along with a proposed abstract, and evidence of historical beneficial use must be filed by the deadline. Nothing was filed.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Mont. Code Ann. § 85-2-227 (2025); Rule 10, W.R.Adj.R.
3. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

CONCLUSION OF LAW

1. The Objectors failed to file information to substantiate a year-round period of diversion for claim 41S 8290-00.

RECOMMENDATIONS

1. The means of diversion for claim 41S 8290-00 should be modified to reflect the primary means of diversion is a "dam" and the secondary means of diversion is a "pump."
 2. The Objection to claim 41S 8290-00 should be dismissed.
- An abstract is enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

James M. Forsythe
Kathryn J. Forsythe
227 Lower Airport Rd.
Lewistown, MT 59457

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

Water Right Number: 41S 8290-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: JAMES M FORSYTHE
227 LOWER AIRPORT RD
LEWISTOWN, MT 59457

KATHRYN J FORSYTHE
227 LOWER AIRPORT RD
LEWISTOWN, MT 59457

Priority Date: JULY 6, 1965

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

*Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 1.55 AC-FT

Climatic Area: 4 - MODERATELY LOW

*Maximum Acres: 1.00

Source Name: LITTLE CASINO 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		SENWNW	22	15N	18E	FERGUS
Period of Diversion: JULY 1 TO SEPTEMBER 30						
Diversion Means: DAM						
PUMP IS A SECONDARY MEANS OF DIVERSION.						
Reservoir: ONSTREAM						
	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		SENWNW	22	15N	18E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Period of Use: JULY 1 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	1.00		SENWNW	22	15N	18E	FERGUS
Total:		1.00					