

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

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

* * * * *

CLAIMANTS: Calvin D. Phillips; Catherine K. Phillips

CASE 41S-2285-R-2025
41S 33597-00
41S 33606-00

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. The record owners of domestic claim 41S 33597-00 and stock claim 41S 33606-00 are Calvin D. Phillips and Catherine K. Phillips.

2. Claims 41S 33597-00 and 41S 33606-00 are multiple uses of the same historical right.

3. Claims 41S 33597-00 and 41S 33606-00 were decreed with the following DNRC issue remark:

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 33597-00, 41S 33606-00.

The documentation supporting both sets of claims is Notice of Appropriation which was attached to the Statements of Claims. The Notice of Appropriation states the amount of water claimed is “1 inch of the waters of the spring located in the SWNE...”.

1. That I now have a legal right to the use, possession and control of and claim 1 inch of the waters of a spring located on the SW¹/₄ Sec 2 Tp 13 S R 17 E in said County and State, for irrigating and other purposes.

Claims 41S 33597-00 and 41S 33606-00 both claimed 1.00 miner’s inch flow rates and were decreed with identical flows.

4. Claim 41S 33597-00 was also claimed and decreed with a 25.00 acre-feet volume and the following DNRC volume issue remark:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 21.77 ACRE-FEET PER YEAR.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the

water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. Rule 19(b)(2), W.R.C.E.R. set the volume guideline to 1.50 acre-feet per household for domestic claims and 2.50 acre-feet per acre of lawn and garden. Claim 41S 33597-00 was decreed with one household and 12.00 acres of lawn and garden. The volume guideline for claim 41S 33597-00 is 31.50 acre-feet: $1.50 + (12 \times 2.50) = 31.50$ acre-feet.

CONCLUSIONS OF LAW

1. The over-filed notice of appropriation issue remark was added to the claims in error. The over-filed notice of appropriation issue remarks should be removed from claims 41S 33597-00 and 41S 33606-00.

2. The volume issue remark was added to claim 41S 33597-00 in error and it should be removed.

RECOMMENDATION

The issue remarks should be removed from claims 41S 33597-00 and 41S 33606-00 with no modification to the elements.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Calvin D. Phillips
Catherine K. Phillips
PO Box 786
Lewistown, MT 59457-0786

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
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1. That I now have a legal right to the use, possession and control of and claim 1 inch of the waters of a spring located on the SW⁴NE⁴ Sec 2 Tp 13 S R 17 E in said County and State, for irrigating and other purposes.

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Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Calvin D. Phillips
Catherine K. Phillips
PO Box 786
Lewistown, MT 59457-0786

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

Water Right Number: 41S 33597-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CALVIN D PHILLIPS
PO BOX 786
LEWISTOWN, MT 59457-0786

CATHERINE K PHILLIPS
PO BOX 786
LEWISTOWN, MT 59457-0786

Priority Date: FEBRUARY 29, 1916
Type of Historical Right: FILED
Purpose (Use): DOMESTIC
Flow Rate: 13.46 GPM
Volume: 25.00 AC-FT
Households: 1
Maximum Acres: 12.00
Source Name: SPRING, UNNAMED TRIBUTARY OF BEAVER CREEK, MIDDLE FORK
Source Type: GROUNDWATER

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		SWSWNE	2	13N	17E	FERGUS	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		FLOWING					
Period of Use:		JANUARY 1 TO DECEMBER 31					
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	12.00		SESENW	2	13N	17E	FERGUS
Total:		12.00					

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33597-00 33606-00

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

Water Right Number: 41S 33606-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CALVIN D PHILLIPS
PO BOX 786
LEWISTOWN, MT 59457-0786

CATHERINE K PHILLIPS
PO BOX 786
LEWISTOWN, MT 59457-0786

Priority Date: FEBRUARY 29, 1916

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 13.46 GPM

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF BEAVER CREEK, MIDDLE FORK

Source Type: GROUNDWATER

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		SWSWNE	2	13N	17E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

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			SESENW	2	13N	17E	FERGUS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33597-00 33606-00