

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

CLAIMANTS: Anton J. Stulc; Mary Lou Stulc

CASE 41S-0448-R-2024

41S 126216-00

NOTICE OF INTENT TO APPEAR: American Prairie
Foundation

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

Claim 41S 126216-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) issued on August 18, 2022. The claim is owned by Anton Stulc and Mary Lou Stulc. The American Prairie Foundation filed a Notice of Intent to appear on the claim. The claim received issue remarks. Issue remarks are notations identifying potential legal

or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. Claim 41S 126216-00 was decreed as a flood irrigation claim with a flow rate of 1.67 CFS and a point of diversion in the NESWSE of Section 12, Township 21N, Range 16E, Fergus County, for use on 44.00 acres as follows:

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	23.00		NENW	12	21N	16E	FERGUS
2	15.00		NWNW	12	21N	16E	FERGUS
3	3.00		SENE	12	21N	16E	FERGUS
4	3.00		SWNE	12	21N	16E	FERGUS
Total:	44.00						

2. The claim received the following maximum acres, flow rate, and point of diversion issue remarks:

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 52.00 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 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). 30027-278-34 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

3. On October 23, 2024, the Court consolidated the claim and set a status conference for the parties to discuss the resolution of the Notice of Intent to Appear and issue remarks on the claims. (Doc.¹ 1.00).

4. The status conference was held on December 3, 2024. (Doc. 3.00). American Prairie appeared. Claimant failed to appear. The Court ordered that Claimant work with the DNRC to resolve the issue remarks on the claim.

5. On February 11, 2025, DNRC Water Resource Specialist Brandon Ahlgren filed a memorandum in this matter. Mr. Ahlgren met with Claimant Anton Stulc to discuss the claims; Mr. Stulc does not oppose the findings of the DNRC. (Doc. 5.00).

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

6. Claim 41S 126216-00 was claimed on April 12, 1982, for use on 52.00 acres. Using aerial photograph MY-7CC-210, Mr. Ahlgren was able to identify all 52.00 acres originally claimed.

7. Accounting for the increase in maximum acres and place of use to accurately reflect the historically decreed acreage, Mr. Ahlgren recommends that the flow rate be increased to 1.96 CFS.

8. Using information in the claim file and after discussion with Claimant, Mr. Ahlgren was able to determine that the historic point of diversion is the SESWNE of Section 12, Township 21N, Range 16E.

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. Evidence in the DNRC Memorandum supports prima facie status of the claim for the claimed maximum acres and place of use of 52.00 acres.

4. The flow rate issue remark on claim 41S 126216-00 overcomes the prima facie status of the claim. Evidence in the DNRC Memorandum supports the modification of the flow rate to 1.96 CFS.

5. The point of diversion issue remark on claim 41S 126216-00 overcomes the prima facie status of the claim. Evidence in the DRNC Memorandum supports the modification of the point of diversion to the SESWNE of Section 12, Township 21N, Range 16E, Fergus County.

RECOMMENDATIONS

1. The maximum acres on claim 41S 126216-00 should be 52.00 acres.
2. The flow rate on claim 41S 126216-00 should be 1.96 CFS.
3. The point of diversion for claim 41S 216126-00 should be SESWNE of Section 12, Township 21N, Range 16E, Fergus County.
4. The issue remarks should be removed.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Anton J. Stulc
Mary Lou Stulc
PO Box 101
Winifred, MT 59489-0101

Service via Electronic Mail:

W. John Tietz
Hallee C. Frandsen
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**POST DECREE
 ABSTRACT OF WATER RIGHT CLAIM
 JUDITH RIVER
 BASIN 41S**

Water Right Number: 41S 126216-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ANTON J STULC
 PO BOX 101
 WINIFRED, MT 59489-0101
 MARY LOU STULC
 PO BOX 101
 WINIFRED, MT 59489-0101

Priority Date: JUNE 10, 1903

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.96 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 52.00

Source Name: JUDITH RIVER

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		SESWNE	12	21N	16E	FERGUS

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 15

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	10.00		NENW	12	21N	16E	FERGUS
2	18.00		NWNW	12	21N	16E	FERGUS
3	21.00		SESWNE	12	21N	16E	FERGUS
4	3.00		SWNE	12	21N	16E	FERGUS

Total: 52.00