

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

* * * * *

CLAIMANT: Sass Land, Inc.

OBJECTOR: Sass Land, Inc.

CASE 41S-2116-R-2025
41S 138281-00

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. Sass Land LLC ("Sass") is the record owner of claim 41S 138281-00.
2. Claim 41S 138281-00 was claimed and decreed with the maximum acres and place of use listed as:

Maximum Acres:		10.00					
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	6.00		SWSENE	28	16N	17E	FERGUS
2	1.00		NWNESE	28	16N	17E	FERGUS
3	1.00		SESENE	28	16N	17E	FERGUS
4	2.00		NWSENE	28	16N	17E	FERGUS
Total:		10.00					

3. Claim 41S 138281-00 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 2.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

All issue remarks must be resolved.

4. On October 10, 2023, Sass objected to the place of use/maximum acres for claim 41S 138281-00, indicating:

The maximum acres and place of use elements should be changed to reflect more acreage than identified in the Preliminary Decree. The Preliminary Decree does not represent the maximum historical beneficial use of the water right. The grounds and evidence upon which this objection is based are the Fergus County Water Resources Survey, historical aerial photos, and other evidence.

5. An Order was issued setting a deadline for Sass to file evidence resolving the issue remarks decreed on claim 41S 138281-00 and addressing its Objection. (Doc.¹1.00).

6. On January 7, 2026, Sass filed its Notice of Additional Evidence Regarding Water Right Claim No. 41S 138281-00. (Doc. 2.00). The Affidavit of consultant Scott Irvin, the Affidavit of Joyce McClure (Exhibit 1), portions of Fergus County Water Resources Survey (WRS) aerial photo No. MY-3CC-248 (Exhibits A1 and A2), WRS field notes (Exhibit B), a marked WRS "farm checked" aerial photograph (Exhibit 2),

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

marked USGS aerial photograph 1-6 GS-VBYX dated July 2, 1968 (Exhibit 3), and a proposed abstract (Exhibit 4) were attached to the January 7, 2026 filing. Scott Irvin referenced the other attachments in his Affidavit.

7. Joyce McClure is 82 years old and states she was involved in farming and ranching on property near the confluence of Big Spring Creek and Cottonwood Creek in Fergus County from 1961 to 2021. Ms. McClure states:

I am personally familiar with historical irrigation practices on the farm/ranch. The places of use for irrigation included the W½NW¼ Section 27 and E½ Section 28, all in Township 16 North, Range 17 East. We appropriated water from Big Spring Creek and Cottonwood Creek under the following water rights:

41S 139525 (Big Spring Creek)
41S 138281 (Cottonwood Creek)

(Doc. 2.00, Exhibit 1). Ms. McClure confirmed that irrigation at the claimed place of use included the points diversion noted in the WRS and associated materials and that all acreage designated in the WRS field notes as “present acres irr.” and “irrigable acres” were historically irrigated.

8. In his Affidavit, Mr. Irvin explained that he imported the WRS aerial photo upon which the place of use/maximum acres issue remark was based into ArcGIS PRO and georeferenced it:

I then traced the irrigated boundary documented in the WRS, and added yellow cross-hatching across the POU. I added points over the PODs as claimed and documented in the WRS. The GIS calculation of the POU, as aligned with the WRS boundary, is 14.25 acres. A screenshot of my GIS calculation follows:



(Doc. 2.00, Exhibit 1). Mr. Irvin also measured the field boundary of the claimed place of use using a 1968 aerial photograph (Doc. 2.00, Exhibit 3) and found the field boundary to match the WRS aerial photograph. Mr. Irvin noted, “Although the Fergus Co. WRS correctly identified the irrigated boundary, it appears to have miscalculated acreage.”

Mr. Irvin specifies that based on the information he reviewed, he found 14.25 acres as historically irrigated under claim 41S 138281-00.

PRINCIPLES OF LAW

1. The Water Court must address all issue remarks decreed on a claim as well as any objections the claim receives. §§ 85-2-233, 85-2-247, and 85-2-248, MCA.

2 A properly filed Statement of Claim for an existing water right is prima facie proof of its content. § 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, ¶ 34, 375 Mont. 86, 329 P.3d 558.

3. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, -231(2), MCA.

4. The party seeking to amend a water right claim has the burden to show, by a preponderance of the evidence, that the claim elements they challenge do not accurately reflect the beneficial use of the water rights as they existed prior to July 1, 1973. *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558; Rule 19, W.R.Adj.R.

CONCLUSION OF LAW

Sass’s proposed modifications to the irrigated acres and place of use for claim 41S 138281-00 are supported by aerial photographs and Affidavits and overcome, by a preponderance of evidence, the prima facie proof afforded the statement of claim, justifying modification of the claim, and resolves Sass’s Objection and the issue remarks decreed on the claim.

RECOMMENDATIONS

1. The following modifications should be made to claim 41S 138281-00:

Maximum Acres: ~~10.00~~ 14.25

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	7.75 6.00	S2SENE	SWSENE	28	16N	17E	FERGUS
2	3.10 1.00	N2NESE	NWNESE	28	16N	17E	FERGUS
3	1.00		SESENE	28	16N	17E	FERGUS
4	3.40 2.00		NWSENE	28	16N	17E	FERGUS
Total:	40.00 14.25						

2. The issue remarks should be removed from the claim abstract.
3. Sass Land LLC's Objection should be dismissed as it has been addressed.

An abstract is enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Kris A Birdwell
Stogsdill & Birdwell, P.C.
krista@lewistownlaw.com
kris@lewistownlaw.com
(Atty for: Sass Land, Inc.)

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

Water Right Number: 41S 138281-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: SASS LAND LLC
207 W MAIN ST STE 3
LEWISTOWN, MT 59457-2718

Priority Date: DECEMBER 31, 1955

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 100.00 GPM

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 14.25

Source Name: COTTONWOOD 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		NWNESE	28	16N	17E	FERGUS
Period of Diversion:	MAY 1 TO OCTOBER 1					
Diversion Means:	PUMP					
2		NWSENE	28	16N	17E	FERGUS
Period of Diversion:	MAY 1 TO OCTOBER 1					
Diversion Means:	PUMP					

Period of Use: MAY 1 TO OCTOBER 1

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	7.75		S2SENE	28	16N	17E	FERGUS
2	3.10		N2NESE	28	16N	17E	FERGUS
3	3.40		NWSENE	28	16N	17E	FERGUS
Total:	14.25						