

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

CLAIMANT: Montana State Board of Land Commissioners

OBJECTOR: Montana State Board of Land Commissioners

CASE 41S-0071-R-2024

- 41S 18155-00
- 41S 18200-00
- 41S 21653-00
- 41S 42853-00
- 41S 47789-00
- 41S 47811-00
- 41S 47835-00
- 41S 47843-00
- 41S 47850-00
- 41S 101593-00
- 41S 101594-00
- 41S 112271-00
- 41S 215296-00
- 41S 30029050

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

The above-captioned claims were decreed in the Preliminary Decree for the Judith River (Basin 41S) issued on August 18, 2022. The claims are owned by the Montana State Board of Land Commissioners (“the Board”) which self-objected to the claims. The claims also 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. On November 4, 2024, the Court consolidated the above-captioned claims and ordered the Board to file documentation resolving the objections and issue remarks on the claims. (Doc.¹ 1.00).

2. On January 6, 2025, the Board filed its “Information to Resolve Self-Objections and Issue Remarks” addressing the changes that will resolve the objections to and issue remarks on each claim. (Doc. 3.00). The Board’s filing is comprised of Verified Motions to Amend (“VMA”) for each claim and requests the Court make the following changes to the following claims:

41S 18155-00:

a. Claim 41S 18155-00 was decreed as a stock water claim with the place of use in the SWSWSE of Section 22, Township 14N, Range 12E, Judith Basin County. The claim received the following place of use issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE IN THE NWSSE SEC 22 TWP 14N RGE 12E JUDITH BASIN CO.

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

b. The Board self-objected and filed a VMA to resolve the place of use issue remark on the claim. The VMA to Amend Water Right Claim 41S 18155-00 requests the Court changes the place of use to the NWSESE of Section 22, Township 14N, Range 12E, Judith Basin County. (Doc. 3.00). The Board filed evidence in the form of a map depicting the corrected place of use.

41S 18200-00:

c. Claim 41S 18200-00 was decreed as a stock water claim with a flow rate of 40.00 gallons per minute (gpm). The claim received the following flow rate issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

d. The Board self-objected and filed a VMA to resolve the flow rate issue remark. The VMA requests changing the flow rate to 35.00 gpm.

41S 21653-00:

e. Claim 41S 21653-00 was decreed as a stock water claim with a flow rate of 40.00 gpm. The claim received the following flow rate issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

f. The Board self-objected and filed a VMA to resolve the flow rate issue remark. The VMA requests the Court change the flow rate to 35.00 gpm.

41S 42853-00

g. Claim 41S 42853-00 was decreed as a stock water claim with a flow rate of 4.00 gpm. The claim received the following 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 42853-00.

h. The Board self-objected to the flow rate and issue remark, stating:

The claim received an issue remark stating combined flow of this right and another exceeds the total of the original filed appropriation. This is incorrect as the attached scanned "update to file" shows.

However, the flow rate claimed exceeds the 1.5 gpm identified on the GW form. A VMA is attached to reduce/correct the flow rate.

i. The Board filed a VMA to correct the flow rate and resolve the incorrect issue remark. The VMA requests the Court change the flow rate to 1.5 gpm.

The Board filed evidence in the form of a claim examination note explaining the basis of the issue remark:

September 26, 2018
41S 42853-00

Page 2 of 2
Review Abstract

Remarks:

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 42853-00, 440052-00. Added during over filed notice of approp review. Exceeds 1.25 gpm. 09/26/2018 MN LRO

Modified the G36 issue remark. This water right is based on a completely different GW filing from that of water right number 41S140052-00. The filing is a GW3 used as a GW4 with Fergus county document number 8778 filed on February 28, 1962. The flow rate however does exceed the 1.5 GPM flow rate identified on the GW form. A copy of the county filing record has been added to the file. JB 11/26/2021

41S 47789-00:

j. Claim 41S 47789-00 was decreed as a sprinkler irrigation claim for use on 40.00 acres in the SE of Section 16, Township 17N, Range 17E, Fergus County.

The claim received the following acres irrigated issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 27.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-22 , DATED 09/25/1979 , APPEARS TO INDICATE 6.70 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

k. The Board filed a VMA to correct the flow rate, acres irrigated, and place of use of the claim. The VMA requests the Court make the following changes:

- i. Flow Rate: 1 CFS
- ii. Maximum Acres: 27.00 acres
- iii. Place of Use: 27.00 acres in the SE of Section 16, Township 17N, Range 17E, Fergus County.

l. The Board filed photographic evidence of the 1970 Fergus County WRS depicting the historic maximum acres and place of use.

41S 47811-00:

m. Claim 41S 47811-00 was decreed as a stock water claim with the place of use in the SESE of Section 20, Township 22N, Range 16E, Fergus County. The claim received the following place of use issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE IN THE SENWNE SEC 20 TWP 22N RGE 16E FERGUS CO.

n. The Board self-objected and filed a VMA to resolve the place of use issue remark. The VMA requests the Court change the place of use to the **SEWNE** of Section 20, Township 22N, Range 16E, Fergus County. The Board filed evidence in the form of a map depicting the correct place of use.

41S 47835-00:

o. Claim 41S 47835-00 was decreed as a stock water claim with a “developed spring” as the means of diversion. The claim received the following means of diversion issue remark:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE CLAIMED DEVELOPMENT APPEARS TO INVOLVE A RESERVOIR. THEREFORE, IT APPEARS THE MEANS OF DIVERSION SHOULD BE "DAM" AND A RESERVOIR RECORD IS NEEDED.

p. The Board self-objected to the means of diversion, source, and source type and filed a VMA to resolve the means of diversion issue remark. The VMA requests the Court make the following changes:

- i. Source Name: “Unnamed Tributary of Ross Fork Creek”
- ii. Source Type: “Surface Water”
- iii. Diversion Means: “Dam”

q. The Board filed evidence in the form of a map depicting the reservoir as well as a Reservoir Questionnaire accurately depicting the claimed dam with the following information for the reservoir record:

- a. Dam height: 8'
- b. Maximum depth (spillway height): 6'
- c. Surface area when full, in acres: .5 ac
- d. Volume (acre-feet): 1.2 AF
Compute as follows: surface area in acres x maximum depth in feet x 0.4 = acre-feet
- e. How were these measurements taken? Estimated

41S 47843-00:

r. Claim 41S 47843-00 was decreed as a stock water claim with the place of use in the SWNENW of Section 26, Township 12N, Range 15E, Judith Basin County. The claim received the following place of use issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE IN THE S2NENW SEC 26 TWP 12N RGE 15E JUDITH BASIN CO.

s. The Board self-objected and filed a VMA to resolve the place of use issue remark. The VMA requests the Court change the place of use to S2NENW of Section 26, Township 12N, Range 15E, Judith Basin County. The Board filed evidence in the form of a map depicting the correct place of use.

41S 47850-00:

t. Claim 41S 47850-00 was decreed as a stock water claim with the place of use in Government Lot 2 in the NE of Section 6, Township 12N, Range 15E, Judith Basin County. The claim received the following place of use issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE IN GOVT LOT 2 IN THE NENWNE SEC 6 TWP 12N RGE 15E JUDITH BASIN CO.

u. The Board self-objected and filed a VMA to resolve the place of use issue remark. The VMA requests the Court change the place of use to Government Lot 2, in the NENWNE of Section 6, Township 12N, Range 15E, Judith Basin County. The Board filed evidence in the form of a map depicting the correct place of use.

41S 101593-00:

v. Claim 41S 101593-00 was decreed as a flood irrigation claim with a flow rate of 1.47 CFS for use on 38.80 acres in the W2E2 of Section 10, Township 18N, Range 15E, Fergus County. The claim received the following acres irrigated issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE FERGOUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO. 30027-178-96 , DATED 09/18/1979 APPEARS TO INDICATE 19.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

w. The Board self-objected and filed a VMA to resolve the acres irrigated issue remarks. The VMA requests the Court make the following changes:

- i. Flow Rate: “323 GPM”
- ii. Maximum Acres: “19 acres”
- iii. Place of Use: “19 acres in the W2E2 Section 10, Township 18N, Range 15E, Fergus County”

x. The Board filed evidence in the form of a September 23, 1997, DNRC Examination Worksheet that identified 19.00 acres based on review of “USDA Aerial 30027-178-96 FE.”

41S 101594-00:

y. Claim 41S 101594-00 was decreed as a flood irrigation claim with a flow rate of 1.97 CFS for use on 52.00 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	13.00		E2E2SW	10	18N	15E	FERGUS
2	36.00		W2SE	10	18N	15E	FERGUS
3	3.00		S2SWNE	10	18N	15E	FERGUS
Total:	52.00						

z. The claim received the following acres irrigated and flow rate issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A FLOW RATE OF.
 THE CLAIMED FLOW RATE CANNOT BE CONFIRMED DUE TO A LACK OF DATA.
 THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
 USDA AERIAL PHOTOGRAPH NO. 30027-178-96 , DATED 09/18/1979 APPEARS TO INDICATE 15.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
 THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.
 THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

aa. The Board self-objected to the claim and filed a VMA to resolve the acres irrigated and flow rate issue remarks. The VMA requests the Court make the following changes:

- i. Flow Rate: “255 GPM”
- ii. Maximum Acres: “15 acres”
- iii. Place of Use: “14 acres in the W2E2 of Section 10, Township 18N, Range 15E, Fergus County.”

iv. Place of Use: “1 acre in the S2SWNE of Section 10, Township 18N, Range 15E, Fergus County.”

bb. The Board filed evidence in the form of a September 23, 1997, DNRC Examination Worksheet that identified 15.00 acres upon review of “USDA Aerial 30027-178-96 FE.”

41S 112271-00:

cc. Claim 41S 215296-00 was decreed as a stock water claim with a point of diversion and place of use in the NWSW of Section 36, Township 15N, Range 19E, Fergus County. The claim received the following point of diversion issue remark:

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

dd. The Board self-objected to the claim and filed a VMA to resolve the point of diversion issue remark on the claim. The VMA requests that the Court make the following changes:

i. Point of Diversion: “NWNWSW of Section 36, Township 15N, Range 19E, Fergus County.”

ii. Point of Use: “NWNWSW of Section 36, Township 15N, Range 19E, Fergus County.”

ee. The Board filed evidence in the form of a map depicting the correct point of diversion and place of use.

41S 215296-00:

ff. Claim 41S 215296-00 was decreed as a use right for a stock claim with no priority date claimed, but an enforceable priority date of June 30, 1973. The claim was decreed with the following issue remarks:

NO PRIORITY DATE WAS CLAIMED.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A RESERVED RIGHT.

gg. The Board self-objected and filed a VMA to resolve the issue remarks. The VMA requests the Court make the following changes:

i. Priority Date: “December 31, 1970”

ii. Type of Historical Right: “Use”

hh. The Board filed evidence in the form of the original land patent and the Fergus County WRS to support the requested changes.

41S 30029050:

ii. Claim 41S was decreed as a use right for livestock direct from source. The claim received the following issue remarks:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A LIVESTOCK DIRECT FROM SOURCE.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

jj. The Board self-objected and filed a VMA to resolve the issue remarks on the claim. The VMA requests the Court make the following changes:

- i. Means of Diversion: “Livestock Direct from Source”
- ii. Type of Historical Right: “Use”

Late Claim Issue Remarks

3. Claim 41S 215296-00 received the following late claim issue remark:

CLAIM FILED LATE 06/26/1996. 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.

4. The late claim issue remark that appeared on claim 41S 215296-00 was placed on the claim to provide water users notice and an opportunity to object to the claim based on its late claim status. No objections were filed to claim 41S 215296-00. The issue remark has served its intended purpose and should be removed pursuant to Section 85-2-248(3), MCA. The claim will continue to be identified as a late claim and is subject to the conditions placed on all late claims.

Notice-Type Issue Remarks

5. Claims 41S 18155-00, 41S 47811-00, 41S 47843-00, and 41S 47850-00 received the following notice-type issue remark:

POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

6. Claim 41S 215296-00 received the following notice type issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

7. The issue remarks identify elements modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remarks indicate that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remarks will be removed. None of the claims received objections.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. § 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. 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.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. 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.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. § 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome.

43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

9. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant's objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

10. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

11. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

12. Sanctions applied against objectors and intervenors may include dismissal of the objector or intervenor from the proceeding. Rule 22, W.R.Adj.R.

13. A water right cannot be enlarged beyond the original beneficial use by the original appropriator to the injury of other appropriators. *Quigley v. McIntosh*, 110 Mont. 495, 505, 103 P.2d 1067, 1072 (1940).

CONCLUSIONS OF LAW

41S 18155-00:

1. The place of use issue remark overcomes the prima facie status of claim 41S 18155-00. The evidence filed by the Board supports the modification of the claim to the place of use in the NWSESE of Section 22, Township 14N, Range 12E, Judith Basin County. The modification of the claim would resolve the Board's self-objection to the place of use.

41S 18200-00:

2. The flow rate issue remark overcomes the prima facie status of claim 41S 18200-00. The evidence filed by the Board supports the modification of the flow rate to

35.00 gpm. The modification of the claim would resolve the Board's self-objection to the flow rate.

41S 21653-00:

3. The flow rate issue remark overcomes the prima facie status of claim 41S 21653-00. The evidence filed by the Board supports the modification of the flow rate to 35.00 gpm. The modification of the claim would resolve the Board's self-objection to the flow rate.

41S 42853-00:

4. The flow rate portion of the issue remark overcomes the prima facie status of claim 41S 42853-00. The evidence filed by the Board supports the modification of the flow rate to 1.50 gpm. The modification of the claim would resolve the Board's self-objection to the flow rate portion of the issue remark.

41S 47789-00:

5. The acres irrigated issue remarks overcome the prima facie status of claim 41S 47789-00. The evidence filed by the Board supports the modification of the flow rate to 1 CFS, the modification of the maximum acres to 27.00 acres, and the modification of the place of use to 27.00 acres in the SE of Section 16, Township 17N, Range 17E, Fergus County. The modification of the claim would resolve the Board's self-objection to the acres irrigated and flow rate.

41S 47811-00:

6. The place of use issue remark overcomes the prima facie status of claim 41S 47811-00. The evidence filed by the Board supports the modification of the place of use to the SENWNE of Section 20, Township 22N, Range 16E, Fergus County. The modification of the claim would resolve the Board's self-objection to the place of use.

41S 47835-00:

7. The means of diversion issue remark overcomes the prima facie status of claim 41S 47835-00. The evidence filed by the Board supports the modification of the source name to "Unnamed Tributary of Ross Fork Creek," the source to "Surface Water,"

and the diversion means to “Dam.” The modification of the claim would resolve the Board’s self-objection to the means of diversion, source name, and source type.

41S 47843-00:

8. The place of use issue remark overcomes the prima facie status of claim 41S 47843-00. The evidence filed by the Board supports the modification of the place of use to the S2NENW of Section 26, Township 12N, Range 15E, Judith Basin County. The modification of the claim would resolve the Board’s self-objection to the place of use.

41S 47850-00:

9. The place of use issue remark overcomes the prima facie status of claim 41S 47843-00. The evidence filed by the Board supports the modification of the place of use to Government Lot 2, in the NENWNE of Section 6, Township 12N, Range 15E, Judith Basin County. The modification of the claim would resolve the Board’s self-objection to the place of use.

41S 101593-00:

10. The acres irrigated issue remarks overcome the prima facie status of claim 41S 101593-00. The evidence filed by the Board supports the modification of the flow rate to 323.00 gpm, the maximum acres to 19.00 acres, and the place of use to 19.00 acres in the W2E2 of Section 10, Township 18N, Range 15E, Fergus County. The modification of the claim would resolve the Board’s self-objection to the maximum acres and place of use.

41S 101594-00:

11. The acres irrigated issue remarks overcome the prima facie status of claim 41S 101593-00. The evidence filed by the Board suggests the modification of the flow rate to 255.00 gpm, the maximum acres to 15.00 acres, the legal land description of one of the places of use to 14.00 acres in the W2E2 of Section 10, Township 18N, Range 15E, Fergus County, and the other place of use to 1.00 acre in the S2SWNE of Section 10, Township 18N, Range 15E, Fergus County. The modification of the claim would resolve the Board’s self-objection to the maximum acres and place of use.

41S 112271-00:

12. The point of diversion issue remark overcomes the prima facie status of claim 41S 112271-00. The evidence filed by the Board supports the modification of the point of diversion to the NWNWSW of Section 36, Township 15N, Range 19E, Fergus County, and the place of use to the NWNWSW of Section 36, Township 15N, Range 19E, Fergus County. The modification of the claim would resolve the Board's self-objection to the point of diversion and place of use.

41S 215296-00:

13. The priority date and type of right issue remarks overcome the prima facie status of claim 41S 215296-00. The evidence filed by the Board supports the modification of the priority date to "December 31, 1970" and the type of historical right to "use." The modification of the claim would resolve the Board's self-objection to the priority date and type of right.

41S 30029050:

14. The means of diversion and type of right issue remarks overcome the prima facie status of claim 41S 30029050. The evidence filed by the Board supports the modification of the means of diversion to "Livestock Direct from Source" and the type of historical right to "use." The modification of the claim would resolve the Board's self-objection to the means of diversion and type of right.

Late Claim Issue Remark

15. The late claim issue remark in Finding of Fact No. 3 has served its notice purpose.

Notice Type Issue Remarks

16. The notice type issue remarks in Findings of Fact Nos. 5 and 6 have served their notice purpose.

RECOMMENDATIONS

41S 18155-00:

1. The place of use for claim 41S 18155-00 should be the NWSESE of Section 22, Township 14N, Range 12E, Judith Basin County.

41S 18200-00:

2. The flow rate for claim 41S 18200-00 should be 35.00 gpm.

41S 21653-00:

3. The flow rate for claim 41S 21653-00 should be 35.00 gpm.

41S 42853-00:

4. The flow rate for claim 41S 42853-00 should be 1.50 gpm

41S 47789-00:

5. The flow rate, maximum acres, and place of use should be:
 - i. Flow Rate: 1.00 CFS
 - ii. Maximum Acres: 27.00 acres
 - iii. Place of Use: 27.00 acres in the SE of Section 16, Township 17N, Range 17E, Fergus County.

41S 47811-00:

6. The place of use should be the SENWNE of Section 20, Township 22N, Range 16E, Fergus County.

41S 47835-00:

7. The source name, source type, and means of diversion should be:
 - i. Source Name: "Unnamed Tributary of Ross Fork Creek"
 - ii. Source Type: "Surface Water"
 - iii. Diversion Means: "Dam"
 - a. Diversion to Reservoir: Diversion #1
 - b. Dam Height: 8.00 feet
 - c. Depth: 6.00 feet
 - d. Surface Area: .50 acres
 - e. Capacity: 1.20 acre-feet

41S 47843-00:

8. The place of use should be S2NENW of Section 26, Township 12N, Range 15E, Judith Basin County.

41S 47850-00:

9. The place of use should be Government Lot 2, in the NENWNE of Section 6, Township 12N, Range 15E, Judith Basin County.

41S 101593-00:

10. The flow rate, maximum acres, and place of use should be:

- i. Flow Rate: “323.00 gpm”
- ii. Maximum Acres: “19.00 acres”
- iii. Place of Use: “19.00 acres in the W2E2 of Section 10, Township 18N, Range 15E, Fergus County”

41S 101594-00:

- 11. The flow rate, maximum acres, and place of use should be:
 - i. Flow Rate: “255.00 gpm”
 - ii. Maximum Acres: “15.00 acres”
 - iii. Place of Use: “14.00 acres in the W2E2 of Section 10, Township 18N, Range 15E, Fergus County.
 - iv. Place of Use: “1.00 acre in the S2SWNE of Section 10, Township 18N, Range 15E, Fergus County.”

41S 112271-00:

- 12. The point of diversion and place of use should be:
 - i. Point of Diversion: “NWNWSW of Section 36, Township 15N, Range 19E, Fergus County.”
 - ii. Place of Use: “NWNWSW of Section 36, Township 15N, Range 19E, Fergus County.

41S 215296-00:

- 13. The priority date and type of right should be:
 - i. Priority Date: “December 31, 1970”
 - ii. Type of Historical Right: “Use”

41S 30029050:

- 14. The means of diversion and type of right should be:
 - i. Means of Diversion: “Livestock Direct from Source”
 - ii. Type of Historical Right: “Use”

- 15. The issue remarks should be removed from all claim abstracts.

An abstract of each claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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