

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

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CLAIMANT: Spring Creek Hutterian Society, **Montana State Board of Land Commissioners--Forestry and Trust Lands Division**

**CASE 41S-2127-R-2025**  
41S 139550-00  
**41S 30175076**

OBJECTOR: Montana State Board of Land Commissioners-  
Forestry and Trust Lands Division

**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 Montana Department of Natural Resources and Conservation, Trust Land Management Division (“TLMD” or “Objector”) objected to Claimant Spring Creek

Hutterian Society (“Spring Creek” or “Claimant”) irrigation claim 41S 139550-00.

TLMD explained:

MBLC objected to the ownership, place of use/maximum acres, and point of diversion of the Claim on the grounds that a portion of the place of use located in the E2E2SW, Section 16, Township 17 North, Range 16 East, Fergus County (“POU 9”) includes State of Montana school trust lands (“Trust Lands”). MBLC requested that it Page 1 of 3 41S-2127-R-2025, MBLC’s Proposed Resolution of Objection be added as a co-owner to the Claim or, in the alternative, that an implied claim be generated on behalf of MBLC for POU 9.

2. TLMD filed a Proposed Resolution of Objection on March 13, 2026.

(“Proposed Resolution”) (Doc.<sup>1</sup> 7.00). TLMD stated in the proposed resolution that it had provided the Proposed Resolution to Spring Creek, but the Claimant had not responded.

### FINDINGS OF FACT

1. The Preliminary Decree states that the priority date for claim 41S 139550-00 is May 7, 1912, and the point of diversion is in section 20, T16N, R17E, Fergus County, and place of use spreads over 372.00 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	11.00		W2NW	17	16N	17E	FERGUS
2	10.00		NWSW	17	16N	17E	FERGUS
3	94.00		E2	18	16N	17E	FERGUS
4	25.00		N2NW	18	16N	17E	FERGUS
5	150.00			7	16N	17E	FERGUS
6	15.00		W2W2	6	16N	17E	FERGUS
7	38.00		E2E2	1	16N	16E	FERGUS
8	17.00		E2E2	12	16N	16E	FERGUS
9	14.00		E2E2SW	36	17N	16E	FERGUS
<b>Total:</b>	<b>372.00</b>						

2. A patent is attached to the Proposed Resolution, as Exhibit B, showing that place of use ID # 9 was acquired by the State on November 8, 1889. The patent documentation shows the trust lands encompassed by place of use ID # 9 were acquired by the State before claim 41S 139550-00 was established.

3. TLMD proposes POU ID # 9 be removed from claim 41S 139550-00 and an implied claim be generated for the place of use on behalf of TLMD. The portion of claim 41S 139550-00 owned by Spring Creek shall retain claim number 139550-00. The portion of the claim owned by TLMS shall be claim number 41S 30175076. All elements

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

of claim 41S 139550-00 will remain as decreed, except place of use ID #9 will be removed from the claim and the flow rate will be reduced from 14.10 cubic feet per second (cfs) to 13.58 cfs. TLMD's claim number 41S 30175076 will be identical to claim 41S 139550-00, except the place of use will reflect only 14.00 acres in Section 36, T17N, R16E, Fergus County and the flow rate will be 0.52 cfs (233.38 gallons per minute).

#### CONCLUSIONS OF LAW

1. The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights. Mont. Code Ann. § 3-7-224.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 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, including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.
3. The settlement documentation and supporting evidence entered into the record are sufficient to contradict and overcome the prima facie claims.
4. If, at the time an appropriation is made, the appropriator is a lessee of school trust land and if the lessee makes and uses the appropriation on school trust land, the appropriation is owned by the State of Montana rather than the lessee. *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985). Implicit in this rule is the determination that the land was indeed fully vested as state school trust land at the time the appropriation was made. *See Harper, et al. v. Montana, State of, Board of Land Commissioners*, Case 43A-A, at p. 10-13, (Memorandum June 29, 2000); *Hamilton Ranches Partnership v. United States of America, et al.*, Case 41G-190, at p. 32 (Opinion July 19, 2005); and *Huckaba Ranch, Inc. v. Golden Sunlight Mines, Inc.*, Case 41G-3, at p. 7-9, (Opinion August 3, 2005).

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court accept the settlement filed in this matter and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via USPS Mail:**

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

**Water Right Number:** 41S 139550-00 STATEMENT OF CLAIM  
**Version:** 5 -- SPLIT POST DECREE  
**Status:** ACTIVE

**Owners:** SPRING CREEK HUTTERIAN SOCIETY  
PO BOX 518  
LEWISTOWN, MT 59457-0518

**Priority Date:** MAY 7, 1912

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 13.58 CFS

**\*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:** 358.00

**Source Name:** BIG SPRING 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		NWNWNE	20	16N	17E	FERGUS

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 1 TO OCTOBER 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	11.00		W2NW	17	16N	17E	FERGUS
2	10.00		NWSW	17	16N	17E	FERGUS
3	94.00		E2	18	16N	17E	FERGUS
4	25.00		N2NW	18	16N	17E	FERGUS
5	150.00			7	16N	17E	FERGUS
6	15.00		W2W2	6	16N	17E	FERGUS
7	36.00		E2E2	1	16N	16E	FERGUS
8	17.00		E2E2	12	16N	16E	FERGUS

**Total:** 358.00

**Remarks:**

IMPLIED CLAIM NO. 41S 210649-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

IMPLIED CLAIM NO. 41S 30175076 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

**Water Right Number:** 41S 30175076 STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:** MONTANA STATE BOARD OF LAND COMMISSIONERS  
FORESTRY AND TRUST LANDS DIVISION  
PO BOX 201601  
HELENA, MT 59620-1601

**Priority Date:** MAY 7, 1912

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 233.38 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:** 14.00

**Source Name:** BIG SPRING 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		NWNWNE	20	16N	17E	FERGUS

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 1 TO OCTOBER 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	14.00		E2E2SW	36	17N	16E	FERGUS

**Total:** 14.00

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**Remarks:**

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41S 139550-00.