FILED
10/08/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0436-R-2024
Hyatt, Robert J.
5.00

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

* *

CLAIMANTS: Elena L. Vestal; Stacey Vestal; Vestal Partnership	**CASE 41S-0436-R-2024** 41S 139285-00 41S 139288-00 41S 139290-00

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. Elena L. Vestal, Stacey Vestal, and Vestal Partnership ("Claimants") are the record holders of claims 41S 139285-00, 41S 139288-00, and 41S 139290-00.

2. All captioned claims received issue remarks. All claims included in the Decree were subject to pre-decree examination by the Montana Department of Natural Resources and Conservation ("DNRC").

3. On October 16, 2024, Claimants were ordered to meet with the DNRC to address the unresolved issue remarks on the above captioned claims. (Doc.[1] 1.00).

4. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum on January 29, 2025. (Doc. 3.00). Mr. Ahlgren reported that Claimant Stacey Vestal contacted the DNRC over the phone regarding the submission of evidence in the case. Subsequently, no further information was received and Mr. Ahlgren states that no further contact was made by any of the claimants regarding information about the claims.

5. Claim 41S 139285-00 received the following substantive issue remark:

> USDA AERIAL PHOTOGRAPH NO(S). 30027-278-141 , DATED 09/25/1979 , APPEARS TO INDICATE 315.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

6. During the initial examination of claim 41S 139285-00 by the DNRC, no irrigation was identified in the Fergus County Water Resource Survey, and 315.00 acres were identified using USDA aerial photographs dated to 1979. During his review of the claim, Mr. Alhgren states in the Memorandum that he was unable to identify any more than 315.00 acres of irrigation. The Memorandum further states that claimant was unable to supply any evidence to substantiate more than what was identified in his review. Regarding the maximum acres issue remark, Mr. Alhgren recommends that claim 41S 139285-00 be reduced to 315.00 acres.

7. The recommended reduction to claim 41S 139285-00 would appear as:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	~~140.00~~	91.00		35	18N	13E	FERGUS
2	~~21.00~~	28.00	NWNW	36	18N	13E	FERGUS
3	~~160.00~~	101.00		25	18N	13E	FERGUS
4	~~90.00~~	75.00	NW	30	18N	14E	FERGUS
5	~~55.00~~	20.00	S2S2	19	18N	14E	FERGUS
Total:	~~466.00~~	315.00					

8. On January 31, 2025, an Order Setting Filing Deadline was issued stating:

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

It is therefore

ORDERED that the claimant shall file documentation regarding their position on the recommendations in the Memo by **February 28, 2025**. If nothing is filed, it will be viewed as agreement with the recommendations in the Memo.

(Doc.4.00). Nothing was filed.

9. Claim 41S 139288-00 received the following issue remark[2]:

ON 12/07/2009 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMO STATING THAT THE RANGE SPECIFIED IN THE POINT OF DIVERSION SHOULE BE 13E RATHER THAN 19E. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

10. The issue remark on claim 41S 139288-00 points to a claimant made clerical error made to the place of use stemming from the original claim file. In a Memorandum dated to December 4, 2009, Water Master Kathryn Lambert states that the legal land description for the place of use should be corrected from range 19E to 13E.

11. Claim 41S 139290-00 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.

12. No objections were filed on the claim.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 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).

[2] The issue remark itself contains a clerical error, in a Memorandum dated to December 4, 2009, Water Master Kathryn Lambert states that the legal land description for the place of use, not the point of diversion, should be corrected to Range 13E.

5. 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. Sections 85-2-227, -231(2), MCA.

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

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA.

8. 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. Section 85-2-248(3), MCA.

9. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

10. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

11. A clerical mistake or mistake arising from omission or oversight may be corrected by the court at any time. Rule 60(a), M.R.Civ.P.

CONCLUSIONS OF LAW

1. Based upon the claim file, evidence included with DNRC's Memorandum, and DNRC's recommendation, the maximum acres in claim 41S 139285-00 should be reduced as suggested by the Memorandum to reflect the historical use and resolve the acres irrigated issue remark.

2. Based upon the claim file, Water Master Kathryn Lambert's Memorandum, and Rule 60(a), M.R.Civ.P., the legal land description for the places of use of claim 41S 139288-00should be corrected as suggested by the Memorandum to reflect the historical use and resolve the issue remark.

3. The notice type issue remarks received on claim 41S 139290-00 have served their purposes.

RECOMMENDATIONS

1. The maximum acres for claim 41S 139285-00 should be reduced to 315.00 acres.

2. The legal land description for the places of use for claim 41S 139288-00 should be corrected as follows:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SE	25	18N 13 E ~~19E~~		FERGUS
2			NENE	36	18N 13 E ~~19E~~		FERGUS

3. The issue remarks on Claims 41S 139285-00, 41S 139288-00, and 41S 139290-00 should be removed.

Post decree abstracts of water right claims reflecting the recommendations are attached to this Report.

Service via USPS Mail

Elena L. Vestal
3514 Benchland Road
Denton, MT 59430

Stacey Vestal
Vestal Partnership
187 Brookville Lane
Lewistown, MT 59457

Electronically Signed By:
Hon. Judge Robert John Hyatt, III
Thu, Oct 08 2026 02:44:40 PM

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 139285-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
ELENA L VESTAL
3514 BENCHLAND RD
DENTON, MT 59430

STACEY VESTAL
187 BROOKVILLE LN
LEWISTOWN, MT 59457

VESTAL PARTNERSHIP
187 BROOKVILLE LN
LEWISTOWN, MT 59457-1517

Priority Date: SEPTEMBER 15, 1892

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: NATURAL SUBIRRIGATION

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

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

Climatic Area: 3 - MODERATE

Maximum Acres: 315.00

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF COYOTE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			35	18N	13E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	FLOWING					
2		NWNW	36	18N	13E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	FLOWING					
3			25	18N	13E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	FLOWING					
4		NW	30	18N	14E	FERGUS
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	FLOWING					

5		S2S2	19	18N	14E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	91.00			35	18N	13E	FERGUS
2	28.00		NWNW	36	18N	13E	FERGUS
3	101.00			25	18N	13E	FERGUS
4	75.00		NW	30	18N	14E	FERGUS
5	20.00		S2S2	19	18N	14E	FERGUS
Total:	315.00						

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 139288-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: ELENA L VESTAL
3514 BENCHLAND RD
DENTON, MT 59430

STACEY VESTAL
187 BROOKVILLE LN
LEWISTOWN, MT 59457

VESTAL PARTNERSHIP
187 BROOKVILLE LN
LEWISTOWN, MT 59457-1517

Priority Date: AUGUST 18, 1919

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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 COYOTE CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENENE	36	18N	13E	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:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SE	25	18N	13E	FERGUS
2			NENE	36	18N	13E	FERGUS

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 139290-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ELENA L VESTAL
3514 BENCHLAND RD
DENTON, MT 59430

STACEY VESTAL
187 BROOKVILLE LN
LEWISTOWN, MT 59457

VESTAL PARTNERSHIP
187 BROOKVILLE LN
LEWISTOWN, MT 59457-1517

Priority Date: NOVEMBER 1, 1937

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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: UNNAMED TRIBUTARY OF COYOTE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESENE	36	18N	13E	FERGUS

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

***Reservoir:** ONSTREAM **Reservoir Name:** CITY DAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	NESENE	36	18N	13E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 16.00 FEET

Depth: 13.00 FEET

Surface Area: 3.25 ACRES

Capacity: 16.90 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SENE	36	18N	13E	FERGUS