FILED
10/27/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0457-R-2024
Hyatt, Robert J.
5.00

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

* *

CLAIMANTS: Bret W. Smith; Renae J. Smith

CASE 41S-0457-R-2024
41S 134313-00
41S 135435-00
41S 135436-00
41S 30123933

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. Bret W. Smith and Renae J. Smith ("Claimants") are the record holders of claims 41S 134313-00, 41S 135435-00, 41S 135436-00, and 41S 30123933.

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 November 1, 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 February 4, 2024. (Doc. 3.00). Mr. Ahlgren reported that Claimants did not contact the DNRC as ordered.

5. Claim 41S 134313-00 received the following issue remark:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A DAM.

6. Claim 41S 134313-00 was claimed April 16, 1982 by Phyllis and Thomas Smith for stock water use from a reservoir on an unnamed tributary of Beaver Creek. The means of diversion reads:

LIVESTOCK DIRECT FROM SOURCE

7. During initial examination, the DNRC determined that the means of diversion should be listed as a dam. In his review Mr. Ahlgren, likewise, said that the means of diversion should be listed as a dam. In his memorandum Mr. Ahlgren recommended modifying the means of diversion to "DAM" and removing the issue remark.

8. Claim 41S 135435-00 received the following issue remarks:

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

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

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

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-14 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

9. During initial examination, the DNRC was unable to identify any irrigation using the Fergus County Water Resource Survey or a 1979 USDA aerial photograph. Mr. Ahlgren was also unable to substantiate any historical irrigation using the same sources as the initial examination. The Claimants have not provided any evidence to substantiate the claim in this proceeding.

10. 41S 135436-00 received the following issue remarks:

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

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

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-14 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

11. During initial examination, the DNRC was unable to identify any irrigation using the Fergus County Water Resource Survey or a 1979 USDA aerial photograph. Mr. Ahlgren was also unable to substantiate any historical irrigation using the same sources as the initial examination. The Claimants have not provided any evidence to substantiate the claim in this proceeding.

12. Because Mr. Ahlgren was unable to confirm historical irrigation of the claimed place of use, he recommended claims 41S 135435-00 and 41S 135436-00 be dismissed.

13. On February 5, 2025, an Order Setting Filing Deadline was issued stating:

> **ORDERED** that the claimant shall file documentation regarding their position on the recommendations in the Memo by **March 7, 2025**. If nothing is filed, it will be viewed as agreement with the recommendations in the Memo.

(Doc. 4.00). Nothing was filed.

14. Claim 41S 30123933 received the following notice-type issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

15. This remark serves to provide notice of the claim's absence from the 1984 Basin 41S Decree. It has served its purpose.

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 Claimants 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 that 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. Sections 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. Section 85-2-247(2), MCA.

CONCLUSIONS OF LAW

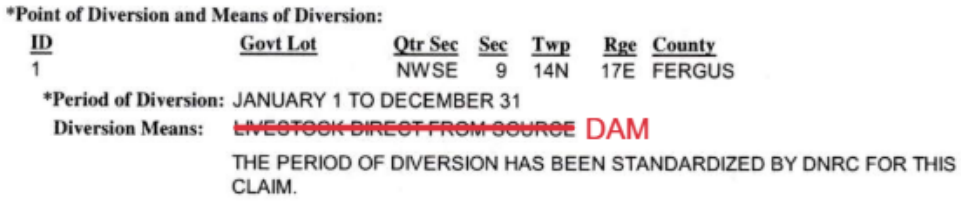
1. Based upon the claim file, the DNRC's recommendation, and pursuant to Rule 22, W.R.Adj.R., claim 41S 134313-00 should be modified to dam.

2. Based upon the claim file, the DNRC's recommendation, and pursuant to Rule 22, W.R.Adj.R., claims 41S 135435-00 and 41S 135436-00 should be dismissed

3. The notice type issue remark on claim 30123933 has served its purpose.

RECOMMENDATIONS

1. The means of diversion for 41S 134313-00 should be modified as follows:



*Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSE	9	14N	17E	FERGUS

*Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: ~~LIVESTOCK DIRECT FROM SOURCE~~ DAM

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

2. Claims 41S 135435-00 and 41S 135436-00 should be dismissed.

3. The issue remarks on claims 41S 134313-00 and 41S 30123933 should be removed.

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

Service via USPS Mail

Bret W. Smith
Renae J. Smith
3220 Beaver Creek Rd
Lewistown, MT 59457-3957

Electronically Signed By:
Hon. Judge Robert John Hyatt, III
Tue, Oct 27 2026 07:53:34 AM

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 134313-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BRET W SMITH
3220 BEAVER CREEK RD
LEWISTOWN, MT 59457-3957

RENAE J SMITH
3220 BEAVER CREEK RD
LEWISTOWN, MT 59457-3957

Priority Date: MAY 31, 1969

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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 BEAVER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSE	9	14N	17E	FERGUS

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

Diversion Means: DAM

***Reservoir:** ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	NWSE	9	14N	17E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWSE	9	14N	17E	FERGUS

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 135435-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: BRET W SMITH
3220 BEAVER CREEK RD
LEWISTOWN, MT 59457-3957

RENAE J SMITH
3220 BEAVER CREEK RD
LEWISTOWN, MT 59457-3957

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: BEAVER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 135436-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: BRET W SMITH
3220 BEAVER CREEK RD
LEWISTOWN, MT 59457-3957

RENAE J SMITH
3220 BEAVER CREEK RD
LEWISTOWN, MT 59457-3957

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: BEAVER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 30123933** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BRET W SMITH
3220 BEAVER CREEK RD
LEWISTOWN, MT 59457-3957

RENAE J SMITH
3220 BEAVER CREEK RD
LEWISTOWN, MT 59457-3957

Priority Date: DECEMBER 2, 1903

Type of Historical Right: USE

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:** UNNAMED TRIBUTARY OF BEAVER CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSWSE	14	14N	17E	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			SWSWSE	14	14N	17E	FERGUS