FILED
10/29/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0472-R-2024
Hyatt, Robert J.
6.00

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

* *

CLAIMANT: Rogers Land & Cattle Co. Inc. NOTICE OF INTENT TO APPEAR: Montana Dept. of Fish Wildlife & Parks	**CASE 41S-0472-R-2024** 41S 101771-00

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. Rogers Land & Cattle Co Inc. ("Claimant") is the record owner of claim 41S 101771-00.

2. All claims included in the Decree were subject to pre-decree examination by the Montana Department of Natural Resources and Conservation ("DNRC"). Claim 41S 101771-00 received the following issue remarks:

> FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
>
> THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 200.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
>
> USDA AERIAL PHOTOGRAPH NO(S). 30045-179-53 AND 30045-179-84 , DATED 09/17/1979 , APPEARS TO INDICATE 350.30 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

3. Montana Dept. of Fish Wildlife & Parks ("FWP") filed a Notice of Intent to Appear ("NOIA") on the claim stating:

> Montana Fish, Wildlife and Parks seeks the resolution of DNRC's issue remarks, as listed on the decree, in accordance with historic evidence.

4. On December 13, 2024, Claimant was ordered to meet with the DNRC to address the unresolved issue remarks on the above captioned claim. (Doc.[1] 1.00)

5. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum on March 27, 2025. (Doc. 3.00). Mr. Ahlgren reported that Claimant met with DNRC as ordered.

6. During initial examination, the DNRC was able to substantiate 200 acres of irrigation using the Judith Basin County Water Resource Survey and 350.30 acres of irrigation utilizing 1979 USDA aerial photographs. Mr. Ahlgren, in his review, was unable to substantiate any more irrigation than what was initially identified using the same sources as the initial examination. The claimant was unable to provide any evidence to substantiate more acres of irrigation. Mr. Ahlgren recommends the maximum acres be reduced to 350.30 acres.

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

7. Further, in his memorandum Mr. Ahlgren recommends the place of use be modified as follows to reflect the recommended change in maximum acres:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
~~1~~	~~75.00~~		~~N2NE~~	~~18~~	~~13N~~	~~12E~~	~~JUDITH BASIN~~
2	~~140.00~~ 132.70		SE	7	13N	12E	JUDITH BASIN
3	~~170.00~~ 176.20		S2	8	13N	12E	JUDITH BASIN
4	~~40.00~~ 41.40		NE	8	13N	12E	JUDITH BASIN
Total:	~~425.00~~ 350.30						

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

> On March 27, 2025, the Department of Natural Resources filed a Memorandum making recommendations for the resolution of issue remarks on claim 41S 101771-00.
>
> It is therefore
>
> **ORDERED** that the parties shall file documentation regarding their position on the recommendations in the Memo by **May 9, 2025**. If nothing is filed, it will be viewed as agreement with the recommendations in the Memo.
>
> Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

(Doc. 4.00). Nothing was filed by the Claimant. On April 2, 2025, FWP filed a statement, stating that after significant review of Mr. Ahlgren's memorandum, FWP agrees with the recommendations regarding the claim. (Doc. 5.00).

9. Being that FWP's NOIA sought resolution of DNRC's issue remarks in accordance with the historic evidence, and FWP's agreement with the memorandum's recommendations; it appears that FWP has no remaining issues within the scope of its NOIA.

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).

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

CONCLUSIONS OF LAW

1. Based upon the claim file, evidence included with DNRC's Memorandum, and DNRC's recommendation, the maximum acres for claim 41S 101771-00 should be reduced as suggested by the Memorandum to reflect the historical use and resolve the issue remark.

2. Based upon the claim file, evidence included with DNRC's Memorandum, and DNRC's recommendation, the place of use for claim 41S 101771-00 should be modified as suggested by the Memorandum.

RECOMMENDATIONS

1. The maximum acres for claim 41S 101771-00 should be reduced to 350.30 acres.

2. The Montana Department of Fish, Wildlife & Parks' Notice of Intent to Appear should be dismissed.

3. The place of use should be modified as shown in finding of fact #8.

A post decree abstract of the water right claim reflecting the recommendations is attached to this Report.

Service via USPS Mail

Rogers Land & Cattle Co. Inc.
HC 81 Box 26
Hobson, MT 59452

Service via Electronic Mail

Alexander R. Scolavino III
Agency Legal Counsel
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(Attorney for Montana Dept. of Fish, Wildlife & Parks)

Electronically Signed By:
Hon. Judge Robert John Hyatt, III
Thu, Oct 29 2026 10:00:15 AM

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 101771-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROGERS LAND & CATTLE CO INC
HC 81 BOX 26
HOBSON, MT 59452

Priority Date: AUGUST 9, 1880

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 4.63 CFS

***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: 350.30

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESWNE	18	13N	12E	JUDITH BASIN

Period of Diversion: APRIL 20 TO OCTOBER 20

Diversion Means: HEADGATE

Period of Use: APRIL 20 TO OCTOBER 20

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	132.70		SE	7	13N	12E	JUDITH BASIN
2	176.20		S2	8	13N	12E	JUDITH BASIN
3	41.40		NE	8	13N	12E	JUDITH BASIN
Total:	350.30						