FILED
10/30/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0484-R-2025
Hyatt, Robert J.
5.00

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

* *

CLAIMANT: Phillips Cattle Co.

CASE 41S-0484-R-2025
41S 135450-00
41S 135461-00
41S 135463-00
41S 135466-00

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. Phillips Cattle Co. ("Claimant") is the record owner of claims 41S 135450-00, 41S 135461-00, 41S 135463-00, and 41S 135466-00.

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 January 3, 2025, Claimant was 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 April 8, 2025. (Doc. 3.00). Mr. Ahlgren reported that no claimant contact was made regarding information about the claims.

5. Claim 41S 135466-00 received the following substantive 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). 30027-178-61 , DATED 09/18/1979 , 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.

6. This was right was claimed for 15.00 acres of irrigation from a spring near an unnamed tributary of Warm Springs Creek. During initial examination of the claim the DNRC identified 0.00 acres of irrigation utilizing the Fergus County Water Resource Survey and 0.00 acres of irrigation using a USDA photograph dated to 1979.

7. During his review of the claim Mr. Ahlgren was able to substantiate 4.00 acres of historical irrigation. Mr. Ahlgren stated that no claimant contacted him and no evidence was provided to substantiate any more irrigatable acres. Mr. Ahlgren recommended the maximum acres for claim 41S 135466-00 be reduced to 4.00 acres.

8. During the initial DNRC review of claim 41S 135466-00 the DNRC could not identify the location of the point of the point of diversion. During his review, Mr. Ahlgren was able to confirm the point of diversion using information in the claim file.

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

Mr. Alhgren, in his memorandum stated that the point of diversion does not require modification.

9. Mr. Ahlgren, in his memorandum, stated that the change in the maximum acreage required a change in flow rate. The DNRC guidelines list 17 gpm/Acre/Year. Consistent with Rule 14(b)(1)(i) and (iii), W.R.C.E.R., and the issue remark, Mr. Ahlgren recommended the flow rate for claim 41S 135466-00 be changed to 68.00 gpm.

10. On April 11, 2025, an Order Setting Filing Deadline was issued stating:

> It is therefore
>
> **ORDERED** that the claimants shall file documentation regarding their position on the recommendations in the Memo by **May 14, 2025**. If nothing is filed, it will be viewed as agreement with the recommendations in the Memo.

(Doc.4.00). Nothing was filed.

11. These claims also received the following notice-type issue remarks:

41S 135450-00

> MEANS OF DIVERSION 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.

41S 135461-00

> MEANS OF DIVERSION 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.

41S 135463-00

> SOURCE NAME 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. The purpose of these notice-type remarks is to provide notice to changes of noteworthy elements of the claim. No objections were filed on the claims. The elements related to the remarks should remain as they appear on the abstract, and the issue remarks should be removed.

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 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.

CONCLUSIONS OF LAW

1. Based upon the claim file, evidence included with DNRC's Memorandum, and DNRC's recommendation, the maximum acres of claim 41S 135466-00 should be reduced as suggested by the Memorandum to reflect the historical use and resolve the acres irrigated issue remarks.

2. Based upon the claim file, evidence included with DNRC's Memorandum, and DNRC's recommendation, the flow rate of claim 41S 135466-00 should be reduced as suggested by the Memorandum to reflect the historical use and resolve the issue remark.

3. The notice type issue remarks received on claims 41S 135450-00, 41S 135461-00, and 41S 135463-00 have served their purposes.

RECOMMENDATIONS

1. The maximum acres for claim 41S 135466-00 should be reduced to 4.00 acres.

2. The flow rate for claim 41S 135466-00 should be reduced to 68.00 gpm.

3. The issue remarks on all claims should be removed.

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

Service via USPS Mail

Phillips Cattle Co
37166 MT Hwy 81
Lewistown, MT 59457

Electronically Signed By:
Hon. Judge Robert John Hyatt, III
Fri, Oct 30 2026 01:35:12 PM

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 135450-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PHILLIPS CATTLE CO
37166 MT HWY 81
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1948

Type of Historical Right: USE

Purpose (Use): DOMESTIC

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

Volume: 2.50 AC-FT

Maximum Acres: 1.00

Source Name: UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: SURFACE WATER

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

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNWSE	24	17N	17E	FERGUS

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

Diversion Means: DAM

PUMP USED AS AN ADDITIONAL MEANS OF DIVERSION.

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	NWNWSE	24	17N	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	1.00		NWNWSE	24	17N	17E	FERGUS
Total:	1.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

135450-00 135461-00

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 135461-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PHILLIPS CATTLE CO
37166 MT HWY 81
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1948

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. 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 WARM SPRING CREEK

Source Type: SURFACE WATER

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

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNWSE	24	17N	17E	FERGUS

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

Diversion Means: DAM

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	NWNWSE	24	17N	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			NWNWSE	24	17N	17E	FERGUS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

135450-00 135461-00

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 135463-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PHILLIPS CATTLE CO
37166 MT HWY 81
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1948

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. 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 WARM SPRING CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS SHEEP CREEK

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENWNE	25	17N	17E	FERGUS

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

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	SENWNE	25	17N	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			SENWNE	25	17N	17E	FERGUS

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number: **41S 135466-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PHILLIPS CATTLE CO
37166 MT HWY 81
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1930

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 68.00 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: 4.00

Source Name: SPRING, UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENWNE	24	17N	17E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	4.00		W2NE	24	17N	17E	FERGUS
Total:	4.00						