

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

CLAIMANTS: Robert J. Valach; Susan M. Valach; William J. Valach

CASE 41S-0428-R-2024

41S 5564-00

41S 5572-00

41S 117524-00

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. Robert J. Valach, Susan M. Valach, and William J. Valach (“Claimants”) are the record holders of claims 41S 5564-00, 41S 5572-00 and 41S 117524-00.

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”). If during claims examination the DNRC cannot confirm some aspect of a claim, an issue remark is added to the claim for review by the Water Court.

3. On September 20, 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 9, 2025. (Doc. 3.00). Mr. Ahlgren reported that Claimant Robert Valach met with DNRC as ordered and did not oppose the findings of the DNRC (Doc. 3.00).

5. Claim 41S 5564-00 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 3.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

6. During initial DNRC review Mr. Ahlgren noted that the acreage of claimed irrigation matched what he was able to identify in the claim file using USDA aerial photographs dated to 1979. (Doc. 2.00). Mr. Ahlgren recommended that the acres irrigated issue remark be removed.

7. Claim 41S 5572-00 received the following issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 112 TIMES THE CAPACITY OF THE RESERVOIR.

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

8. During initial examination, the DNRC was unable to identify the location of the claimed headgate. Claimant Robert Valach confirmed the point of diversion in the SENENE of Section 17, Township 15N, Range 18E, Fergus County, based on information provided by the claimant Mr. Ahlgren recommended that the point of diversion issue remark be removed.

9. The Memorandum stated that the claimed volume is excessive for the size of reservoir claimed. Utilizing the DNRC guidelines of Reservoir Capacity (3.20 Acre-Feet) x 2.5 Fills/Year, Mr. Ahlgren recommended the volume be reduced from 268.00 Acre-Feet to 8.00 Acre-Feet.

10. Claim 41S 117524-00 received the following issue remark:

THE CLAIMED MEANS OF DIVERSION DOES NOT APPEAR TO BE STANDARDIZED AND CANNOT BE CLARIFIED FROM AVAILABLE DATA

11. During initial examination, Mr. Ahlgren was unable to identify any means of diversion. Claimant Robert Valach confirmed the historical means of diversion is a pipeline and based on that information, Mr. Ahlgren recommended modifying the means of diversion to “PIPELINE.”

12. On January 10, 2025, an order was filed stating:

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

(Doc. 4.00).Nothing was filed.

13. Claims 41S 5564-00 and 41S 5572-00 received the following notice-type issue remarks:

41S 5564-00

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.

This remark serves to provide notice of a change to the source name during DNRC’s reexamination of the claim.

41S 5572-00

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

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.

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

These remarks serve to provide notice of a change to the source name on the claim, and potential issues with the volume and flow rate of the claim. No objections were filed.

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. 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 against the claimed water right. Section 85-2-247(2), MCA.
8. 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. When a claimant fails to comply with an Order issued by the Water Court, the Court upon its own initiative, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The maximum acres issue remark and flow rate does not overcome the prima facie status of claim 41S 5564-00. USDA aerial photograph dated September 18, 1979, support the claimed acreage.

2. The volume issue remark overcomes the prima facie status of claim 41S 5572-00. The evidence provided in the memorandum shows the volume of claim 41S 5572-00 should be 8.00 Acre-Feet.

3. The means of diversion issue remark overcomes the prima facie status of the claimed means of diversion in claim 41S 117524-00. The evidence provided in the memorandum states the means of diversion for claim 41S 117524-00 is a pipeline.

4. The notice type issue remarks received on claims 41S 5564-00 and 41S 5572-00 have served their purpose. No objections were filed and the remarks can be removed.

RECOMMENDATIONS

1. The volume for claim 41S 5572-00 should be reduced to 8.00 Acre-Feet.
2. The means of diversion for claim 41S 117524-00 should be modified to “PIPELINE.”
3. The issue remarks should be removed from the claim abstracts.

A post decree abstract of each of the water right claims reflecting the recommendations are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Robert J. Valach
Susan M. Valach
2060 Truck Bypass
Lewistown, MT 59457-8336

William J. Valach
2751 Ridge Lane
West Linn, OR 97068

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

Water Right Number: 41S 5564-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT J VALACH
2060 TRUCK BYPASS
LEWISTOWN, MT 59457-8336

SUSAN M VALACH
2060 TRUCK BYPASS
LEWISTOWN, MT 59457-8336

Priority Date: AUGUST 9, 1926

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 166.60 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: 13.50

***Source Name:** UNNAMED TRIBUTARY OF BIG SPRING CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS BUTTERMILK CREEK

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		NWNESE	17	15N	18E	FERGUS

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 30

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	10.00		E2NENE	17	15N	18E	FERGUS
2	2.00		NESENE	17	15N	18E	FERGUS
3	1.50		NWNWNW	16	15N	18E	FERGUS

Total: 13.50

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

Water Right Number: 41S 5572-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT J VALACH
2060 TRUCK BYPASS
LEWISTOWN, MT 59457-8336

SUSAN M VALACH
2060 TRUCK BYPASS
LEWISTOWN, MT 59457-8336

Priority Date: DECEMBER 31, 1956

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

***Flow Rate:** 166.60 GPM

***Volume:** 8.00 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED,
IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

***Source Name:** UNNAMED TRIBUTARY OF BIG SPRING CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS BUTTERMILK CREEK

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		SENENE	17	15N	18E	FERGUS

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

Diversion Means: HEADGATE

***Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWNW	16	15N	18E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 14.00 FEET

Depth: 10.00 FEET

Surface Area: 0.80 ACRES

Capacity: 3.20 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL
RESERVOIR DATA.

Period of Use: JANUARY 1 TO DECEMBER 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			NWNWNW	16	15N	18E	FERGUS

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

Water Right Number: 41S 117524-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROBERT J VALACH
2060 TRUCK BYPASS
LEWISTOWN, MT 59457-8336

WILLIAM J VALACH
2751 RIDGE LN
WEST LINN, OR 97068

Priority Date: DECEMBER 31, 1969

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.25

Source Name: ALPINE GULCH

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		SENWSE	12	16N	19E	FERGUS
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: PIPELINE						

Period of Use: JANUARY 1 TO DECEMBER 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	0.25		SENWSE	12	16N	19E	FERGUS
Total:		0.25					