

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

* * * * *

CLAIMANTS: Glenn W. Todd; Jane N. Todd

CASE 41S-0444-R-2024

41S 134259-00

41S 139258-00

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. Glenn W. Todd and Jane N. Todd ("Claimants") are the record holders of claims 41S 134259-00 and 41S 139258-00.

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 October 18, 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 16, 2025. (Doc. 3.00). Mr. Ahlgren reported that Claimant Glenn Todd met with DNRC as ordered and agreed with the findings of the DNRC (Doc. 3.00).

5. Claim 41S 134259-00 received the following issue remarks:

USDA AERIAL PHOTOGRAPH NO(S). 30045-279-69 , DATED 09/18/1979 , APPEARS TO INDICATE 15.80 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

SOURCE NAME SHOULD ACTUALLY BE SUBIRRIGATION.

6. During the initial examination of claim 41S 134259-00, the DNRC identified 0.00 acres of irrigation utilizing the Fergus County Water Resource Survey and 15.80 acres utilizing USDA aerial photograph dated to 1979. During Mr. Ahlgren’s review, he was unable to substantiate any further irrigation utilizing the same sources. Claimant was unable to provide any evidence of further irrigation than what was identified during the examination. Based on the evidence provided by the Fergus County Water Resources Survey, the DNRC recommended that the maximum acres and place of use be modified to 15.80 acres at NENE Section 13, Township 17N, Range 13E, Fergus County.

7. The Memorandum further states that the source name of claim 41S 134259-00 should be modified to “Subirrigation, Unnamed Tributary of Pacer Coulee” in accordance with DNRC standardization of source names.

8. On January 22, 2025, Claimants received an order from the Court stating:

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

ORDERED that the claimants shall file documentation regarding their position on the recommendation in the Memo by **February 7, 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 139258-00 received the following issue remark:

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 to the previous modification of the source name. 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).

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 overcomes the prima facie status of claim 41S 139259-00. The evidence provided in the memorandum shows the historical maximum acres of claim 41S 139259-00 is 15.80 acres.

2. The source name issue remark overcomes the prima facie status of claim 41S 139258-00. The information provided in the memorandum shows the name is most properly Subirrigation, Unnamed Tributary of Pacer Coulee.

3. The notice type issue remark received on claim 41S 139258-00 has served its purpose and no objections were filed.

RECOMMENDATIONS

1. The maximum acres and place of use for claim 41S 134259-00 should be reduced to 15.80

acres and the place of use should be modified as follows:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	~~30.00~~ 15.80		NENE	13	17N	13E	JUDITH BASIN
Total:	~~30.00~~ 15.80						

2. The source name of claim 139258-00 should be modified to Subirrigation, Unnamed Tributary of Pacer Coulee.

3. The issue remarks on claims 41S 134259-00 and 41S 139258-00 should be removed.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Glenn W. Todd
Jane N. Todd
12837 Benchland Road
Denton, MT 59430

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

Water Right Number: 41S 134259-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: GLENN W TODD
12837 BENCHLAND RD
DENTON, MT 59430

JANE N TODD
12837 BENCHLAND RD
DENTON, MT 59430

Priority Date: DECEMBER 31, 1930
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: 15.80
Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF PACER COULEE
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		NENE	13	17N	13E	JUDITH BASIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		FLOWING				
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	15.80		NENE	13	17N	13E	JUDITH BASIN
Total:		15.80					

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

Water Right Number: 41S 139258-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GLENN W TODD
12837 BENCHLAND RD
DENTON, MT 59430

JANE N TODD
12837 BENCHLAND RD
DENTON, MT 59430

Priority Date: NOVEMBER 3, 1891

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:** SPRING, UNNAMED TRIBUTARY OF PACER COULEE

Source Type: GROUNDWATER

ALSO KNOWN AS UNNAMED TRIBUTARY OF HAMMET 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		NESWSE	14	17N	13E	JUDITH BASIN

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:

<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			SE	14	17N	13E	JUDITH BASIN
2			SW	13	17N	13E	JUDITH BASIN