

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
JUDITH RIVER BASIN (41S)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Edward Huberman; Cody L. Ream

CASE 41S-1032-R-2024  
41S 32648-00

**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 may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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. Edward Huberman and Cody L. Ream (the Claimants) are the record owners of claim 41S 32648-00.
2. Claim 41S 32648-00 was decreed with a 5.00 gallon per minute (gpm) flow rate, and the DNRC added the following DNRC issue remark to the claim:
  - THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 2.5 GPM.

Section 85-2-248, MCA requires all issue remarks be resolved.

3. The issue remark decreed on claim 41S 32648-00 appears to be based on a GW4 form – Declaration of Vested Groundwater Rights attached to the Statement of Claim. The form states that the well described by claim 41S 32648-00 pumps “about two and one-half gallons per minute” (gpm):

~~4. The amount of groundwater claimed (in miner's inches or gallons per minute) about two and one-half gallons per minute and like amount used by neighbor~~

Therefore, as claimed, it appears claim 41S 32648-00 over claims the documented flow rate.

4. An Order was issued setting a deadline for the Claimants to agree or disagree that the flow rate for claim 41S 32648-00 be reduced from 5.00 gpm to 2.50 gpm. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Edward Huberman and Cody L. Ream agree with the proposed flow rate reduction and a Master’s Report would be issued. The Order included the following language:

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.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. The flow rate for claim 41S 32648-00 should be reduced from 5.00 gpm to 2.50 gpm.

2. The issue remark should be removed from claim 41S 32648-00.

An abstract is attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Edward Huberman  
420 Lane St  
Lewistown, MT 59457-8313

Cody L. Ream  
408 Lane St  
Lewistown, MT 594572

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

**Water Right Number:** 41S 32648-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** EDWARD HUBERMAN  
420 LANE ST  
LEWISTOWN, MT 59457-8313  
  
CODY L REAM  
408 LANE ST  
LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1958

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 2.50 GPM

**Volume:** 2.05 AC-FT

**Households:** 2

**Maximum Acres:** 0.25

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**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		SWNWSE	9	15N	18E	FERGUS

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

**Diversion Means:** WELL

**Subdivision:** LEWISTOWN HEIGHTS TRACT/LOT: 011 BLOCK: 59

**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		SWNWSE	9	15N	18E	FERGUS

**Subdivision:** LEWISTOWN HEIGHTS TRACT/LOT: 11 BLOCK: 59

2                      0.13                      SENWSE                      9                      15N                      18E                      FERGUS

**Subdivision:** LEWISTOWN HEIGHTS TRACT/LOT: 9-10 BLOCK: 59

**Total:** 0.38