

Montana Water Court  
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**FILED**  
10/08/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41S-0357-R-2024  
Block, Nathaniel  
5.00

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

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CLAIMANT: Patricia Sue Wichman Revocable Living Trust

**CASE 41S-0357-R-2024**  
41S 141258-00  
41S 141267-00

**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

The above-captioned claims appeared in the Preliminary Decree for the Judith River (Basin 41S) with issue remarks.

The claims were consolidated into Case 41S-0357-R-2024 on May 21, 2024, and the claimants were ordered to work with the Department of Natural Resources and Conservation to resolve the issue remarks on the claims. On July 1, 2024, a Memorandum ("Memo") was filed (Doc.<sup>1</sup> 2.00). On September 3, 2024, claimant Patricia Sue Wichman Revocable Living Trust filed documentation stating that it agreed with the recommendation in the Memo.

## FINDINGS OF FACT

1. Claim 41S 141258-00 was decreed with the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 60.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY ( 1963 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30045-179-112 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

2. The Memo recommends dismissal of the claim as the DNRC was unable to substantiate historic irrigation.

3. Claim 41S 141267-00 was decreed with the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD 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.

4. The remarks provide notice that a period of diversion was added to match the period of use and the reservoir record was modified during reexamination. Both remarks state that if no objections were filed, the elements would remain as they appeared in the decree and the remarks would be removed. No objections were filed, pursuant to the plain language of the remarks the remarks should be removed.

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

## PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. 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. §§ 85-2-227, -231(2), MCA.

## CONCLUSION OF LAW

1. Claim 41S 141258-00 should be dismissed.

## RECOMMENDATIONS

1. Claim 41S 141258-00 should be dismissed.

2. The issue remarks on claim 41S 141267-00 should be removed as discussed above.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

## ELECTRONICALLY SIGNED AND DATED BELOW.

### Service via USPS Mail:

Patricia Sue Wichman Revocable Living Trust  
PO Box 199  
Hobson, MT 59452-0199

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

**Water Right Number:** 41S 141258-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** **DISMISSED**

**Owners:** WICHMAN, PATRICIA SUE REVOCABLE LIVING TRUST  
PO BOX 199  
HOBSON, MT 59452-0199

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** GROUNDWATER  
**Source Type:** GROUNDWATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**  
THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 41S 141267-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** WICHMAN, PATRICIA SUE REVOCABLE LIVING TRUST  
PO BOX 199  
HOBSON, MT 59452-0199

**Priority Date:** JUNE 1, 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 HAUCK 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		NWNESW	22	14N	15E	JUDITH BASIN

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**\*Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNESW	22	14N	15E	JUDITH BASIN

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 23.00 FEET

**Depth:** 20.00 FEET

**Surface Area:** 6.38 ACRES

**Capacity:** 51.00 ACRE-FEET

**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			E2SW	22	14N	15E	JUDITH BASIN