

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

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CLAIMANT: Justin Wichman

CASE 41S-0366-R-2024

41S 10440-00

41S 10441-00

**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-0366-R-2024 on June 4, 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 9, 2024, a Memorandum (“Memo”) was filed (Doc.<sup>1</sup> 2.00). The Memo states that the claimants failed to contact DNRC as ordered. On August 22, 2024, an Order was issued requiring the claimants to file documentation stating their position on the recommendations in the Memo. Nothing was filed in response to the Order.

### FINDINGS OF FACT

1. Claim 41S 10440-00 was decreed with 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). 30027-278-96 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

2. The Memo recommends dismissal of the claim.

3. Claim 41S 10441-00 was decreed with 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 5.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.  
THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE.  
THE CLAIMED VOLUME EQUALS 6.38 TIMES THE CAPACITY OF THE RESERVOIR.

4. The Memo recommends the following modification to volume:

**Volume:** ~~73.80 AC FT~~ **28.90 AC-ft**

5. The Memo recommends the removal of the flow rate and acres irrigated issue remarks without modifications to the claim. The Memo further recommends removal of the volume issue remarks if the proposed volume modification is adopted by this Court.

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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. The DNRC recommendations should be adopted.

## RECOMMENDATIONS

1. Claim 41S 10440-00 should be dismissed.
2. Claim 41S 10441-00 should be modified as follows:

**Volume:** ~~73.80 AC-FT~~ **28.90 AC-ft**

3. Pursuant to the Memo, adoption of the recommendations resolves the substantive issue remarks on the claims. The ‘notice’ type issue remarks should be removed from the claims.

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:**

Justin Wichman  
1921 Wichman Road  
Moore, MT 59464-9440

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

**Water Right Number:** 41S 10440-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** JUSTIN WICHMAN  
1921 WICHMAN ROAD  
MOORE, MT 59464-9440

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** UNNAMED TRIBUTARY OF ROSS FORK CREEK

**Source Type:** SURFACE WATER

**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 10441-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JUSTIN WICHMAN  
1921 WICHMAN ROAD  
MOORE, MT 59464-9440

**Priority Date:** JUNE 20, 1897

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

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

**Volume:** 28.90 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 25.30

**\*Source Name:** UNNAMED TRIBUTARY OF ROSS FORK CREEK

**Source Type:** SURFACE WATER  
ALSO KNOWN AS ODENWALD 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         |                 | SENWNW         | 33         | 15N        | 16E        | FERGUS        |

**\*Period of Diversion:** MARCH 15 TO OCTOBER 1

**Diversion Means:** HEADGATE

**\*Reservoir:** ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
|                 | SENWNW         | 33         | 15N        | 16E        | FERGUS        |

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 10.00 FEET

**Surface Area:** 2.89 ACRES

**Capacity:** 11.56 ACRE-FEET

**Period of Use:** MARCH 15 TO OCTOBER 1

**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         | 3.50         |                 | N2NWNW         | 33         | 15N        | 16E        | FERGUS        |
| 2         | 7.50         |                 | SWSW           | 28         | 15N        | 16E        | FERGUS        |
| 3         | 13.00        |                 | SESE           | 29         | 15N        | 16E        | FERGUS        |

|               |             |        |    |     |     |        |
|---------------|-------------|--------|----|-----|-----|--------|
| 4             | <u>1.30</u> | S2NESE | 29 | 15N | 16E | FERGUS |
| <b>Total:</b> | 25.30       |        |    |     |     |        |

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**Remarks:**

THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 41S 30980-00. THEY SHARE OVERLAPPING PLACES OF USE.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY HAVE OVERLAPPING POINTS OF DIVERSION. 41S 10440-00, 41S 10441-00, 41S 30980-00.

THIS RIGHT IS ASSOCIATED TO 41S 10440-00 AND 41S 30980-00. THEY HAVE OVERLAPPING POINTS OF DIVERSION.