

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

* * * * *

CLAIMANTS: John A. Walker; Louis D. Walker

CASE 41S-2162-R-2025
41S 104236-00

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. Domestic claim 41S 104236-00 was claimed and decreed with a 7.00 gallon per minute (gpm) flow rate.

2. Claim 41S 104236-00 was decreed with a Montana Department of Natural Resources and Conservation (“DNRC”) issue remark:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 1.5 GPM.

All issue remarks must be resolved.

3. The issue remark appears to have been added to claim 41S 104236-00 during DNRC’s examination of the claim. The remark references the 1.50 gpm referenced on the Notice of Completion of Groundwater Appropriation by Means of Well form (GW2) that was attached to the Statement of Claim.

Pumping Water Level..... feet at $1 \frac{1}{2}$ gals per min.
..... gal. per minute.

Based on the record, it appears the flow rate for claim 41S 104236-00 should be 1.50 gpm.

4. An Order was issued setting a deadline to determine if John A. Walker and Louis D. Walker agree or disagree that the flow rate for claim 41S 104236-00 should be modified to 1.50 gpm. (Doc.¹1.00). The Order indicated that if nothing were filed by the deadline, it would be determined that John A. Walker and Louis D. Walker agree the flow rate for claim 41S 104236-00 should be modified to 1.50 gpm.

Nothing was filed.

PRINCIPLES OF LAW

1. 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.

2. A properly filed Statement of Claim for an existing water right is *prima facie* proof of its content. Mont. Code Ann. § 85-2-227 (2025); Rule 10, W.R.Adj.R.

3. *Prima facie* proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. 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.

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

4. 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

The information on the Notice of Completion of Groundwater Appropriation by Means of Well form (GW2) that was attached to the Statement of Claim overcomes the *prima facie* statement of claim. Without additional information contradicting and overcoming the information on the GW2 form, the flow rate should be modified to 1.50 gpm.

RECOMMENDATIONS

1. The flow rate for claim 41S 104236-00 should be modified from 7.00 gpm to 1.50 gpm.

2. The issue remark should be removed from the claim abstract.

An abstract is enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

John A. Walker
c/o Thelma Walker & Sally Horacek
3201 Lime Kiln Rd
Lewistown, MT 59457-8088

Louis D. Walker
PO Box 63
Hobson, MT 59452

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

Water Right Number: **41S 104236-00 STATEMENT OF CLAIM**

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
JOHN A WALKER
C/O THELMA WALKER & SALLY HORACEK
3201 LIME KILN RD
LEWISTOWN, MT 59457-8088

LOUIS D WALKER
PO BOX 63
HOBSON, MT 59452

Priority Date: MARCH 17, 1966

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 1.50 GPM

Volume: 2.50 AC-FT

Households: 2

Maximum Acres: 0.50

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		NWNWNW	21	14N	13E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	0.50		NWNWNW	21	14N	13E	JUDITH BASIN
Total:	0.50						