

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: Paul Castagno; Louse Creek Property, LLC

NOTICE OF INTENT TO APPEAR: **State of Montana Dept. of
Fish Wildlife & Parks; State of Montana
University System (MSU)**

CASE 41S-0753-R-2024

41S 14604-00

41S 14655-00

41S 14663-00

41S 14664-00

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. Paul Castagno is the record owner of claim 41S 14604-00 and 41S 14655-00; Paul Castagno and Louse Creek Property, LLC are the record co-owners of claims 41S 14663-00 and 41S 14664-00.

2. Montana Department of Fish Wildlife & Parks and the State of Montana University System filed Notices of Intent to Appear for claims 41S 14663-00 and 41S 14664-00.¹

3. Claims 41S 14604-00, 41S 14655-00, 41S 14663-00, and 41S 14664-00 were decreed with DNRC issue remarks:

41S 14604-00:

- THE PRIORITY DATE AND/OR TYPE OF HISTORICAL RIGHT MAY BE INCORRECT. THIS WATER RIGHT APPEARS TO BE CLAIMING THE SAME GW4 FORM USED FOR 41S 14655-00 BUT THEIR PRIORITY DATES DIFFER. THE SUBMITTED GW4 FORM INDICATES A DATE OF EARLIEST BENEFICIAL USE AS "1919." FURTHER, THESE CLAIMS APPEAR TO BE A MULTIPLE USE OF THE SAME RIGHT AND MAY NEED A MULTIPLE USE REMARK. IF IT IS DETERMINED THEY ARE NOT MULTIPLE USES, THEN THEIR COMBINED FLOW RATE EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION.

41S 14655-00:

- THE PRIORITY DATE AND/OR TYPE OF HISTORICAL RIGHT MAY BE INCORRECT. THIS WATER RIGHT APPEARS TO BE CLAIMING THE SAME GW4 FORM USED FOR 41S 14604-00 BUT THEIR PRIORITY DATES DIFFER. THE SUBMITTED GW4 FORM INDICATES A DATE OF EARLIEST BENEFICIAL USE AS "1919." FURTHER, THESE CLAIMS APPEAR TO BE A MULTIPLE USE OF THE SAME RIGHT AND MAY NEED A MULTIPLE USE REMARK. IF IT IS DETERMINED THEY ARE NOT MULTIPLE USES, THEN THEIR COMBINED FLOW RATE EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION.

41S 14663-00 and 41S 14664-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-171 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

¹Due to court error, the NOIA parties were not included on the caption or service list for the November 4, 2024 or the January 2, 2025 Orders. Dismissal is being recommended for both claims for which NOIAs were filed.

4. The Claimants were ordered to meet with a DNRC employee to address the unresolved issue remarks. (Doc.²1.00).

5. On December 9, 2024, counsel for Louse Creek Property, LLC, Oliver J. Urick, consented to the dismissal of claims 41S 14663-00 and 41S 14664-00, to the extent they apply to Louse Creek Property, LLC property. (Doc. 4.00).

6. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating none of the Claimants met with the DNRC. (Doc. 5.00). Ms. Bluhm indicated she reviewed the Fergus County Water Resource Survey and aerial photos to prepare the Memorandum.

7. **Claims 41S 14604-00 and 14655-00** (Paul Castagno): Ms. Bluhm explained that stock claim 41S 14604-00 and domestic claim 41S 14655-00 were both claimed by Wayne and Marian Stevenson on March 9, 1981. Ms. Bluhm also recognized that both claims relied on the same GW4 Form – Declaration of Vested Groundwater Rights, indicating the date of earliest beneficial use was “1919”:

3. Date or approximate date of earliest beneficial use, and how continuous the use has been 1919
..... Continuous

7. The date of commencement and completion of the construction of the well, wells, or other works for withdrawal of groundwater 1919

Ms. Bluhm recommended a multiple-use information remark be added to the claims and she stated no priority date changes are needed.

Ms. Bluhm’s recommendations did not address the issues identified by the remarks decreed on claims 41S 14604-00 and 14655-00. The remarks point to the likelihood that the claims are multiple uses of the same historical appropriation; multiple use claims have identical priority dates. Further, if the claims are not multiple uses, they overclaim the 20.00 gallons per minute claimed on the GW4:

²“Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

4. The amount of groundwater claimed (in miner's inches or gallons per minute) 20 gallons per minute

Claim 41S 14604-00 was claimed as a filed right with a June 1, 1919 priority date; no information was provided as to why the June 1, 1919 date was specified. Claim 41S 14655-00 was claimed as a filed right with a May 1, 1919 priority date; no information was provided as to why the May 1, 1919 date was specified. Additionally, during the examination of claims 41S 14604-00 and 14655-00, the priority dates should have been standardized to December 31, 1919, under Rule 13, W.R.C.E.R. The issue remarks decreed on claims 41S 14604-00 and 14655-00 will be resolved if the priority date for both claims is changed to December 31, 1919 and a multiple-use remark is added.

8. **Claims 41S 14663-00 and 14664-00** (Paul Castagno and Louse Creek Property, LLC): The DNRC located no irrigation during its initial examination of claims 41S 14663-00 and 14664-00. Ms. Bluhm indicated she located no irrigation “after this investigation.” It appeared Ms. Bluhm is recommending dismissal of claims 41S 14663-00 and 41S 14664-00.

On December 9, 2024, counsel for Louse Creek Property, LLC, Oliver J. Urick, consented to the dismissal of claims 41S 14663-00 and 41S 14664-00 to the extent they apply to Louse Creek Property, LLC property. (Doc. 4.00).

9. An Order was issued to determine Claimant Paul Castagno agreed if that the priority dates for claims 41S 14604-00 and 41S 14665-00 should be modified to December 31, 1919 and a multiple-use remark should be added to both claims. The Order also set a deadline for Paul Castagno to agree or disagree that claims 41S 14663-00 and 41S 14664-00 should be dismissed. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Paul Castagno agreed with the recommended modifications for claims 41S 14604-0 and 41S 14665-00 and the proposed dismissal of claims 41S 14663-00 and 41S 14664-00. The following language was included in the Order:

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.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim.
Section 85-2-248, MCA.
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 priority dates for claims 41S 14604-00 and 41S 14655-00 should be modified to December 31, 1919, and a multiple use remark should be added to both claims, as discussed in Finding of Fact No. 7. The issue remarks should be removed from both claims.
2. Claims 41S 14663-00 and 41S 14664-00 should be dismissed.
Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

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Caption and Service List Updated: 2/11/2025

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

Water Right Number: 41S 14604-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PAUL CASTAGNO
1770 MEADOWLARK RD
MOCCASIN, MT 59462

Priority Date: DECEMBER 31, 1919

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 20.00 GPM

***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: 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		NWNESW	25	16N	15E	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			NWNESW	25	16N	15E	JUDITH BASIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

14604-00 14655-00

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

Water Right Number: 41S 14655-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PAUL CASTAGNO
1770 MEADOWLARK RD
MOCCASIN, MT 59462

Priority Date: DECEMBER 31, 1919

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

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		NWNESW	25	16N	15E	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	1.00		NWNESW	25	16N	15E	JUDITH BASIN

Total: 1.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

14604-00 14655-00

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

Water Right Number: 41S 14663-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: PAUL CASTAGNO
1770 MEADOWLARK RD
MOCCASIN, MT 59462

LOUSE CREEK PROPERTY LLC
PO BOX 184
HOBSON, MT 59452

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: LOUSE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

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 14664-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: PAUL CASTAGNO
1770 MEADOWLARK RD
MOCCASIN, MT 59462

LOUSE CREEK PROPERTY LLC
PO BOX 184
HOBSON, MT 59452

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: LOUSE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.