

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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CLAIMANTS: Darlene L. Henke; Richard C. Henke

CASE 41S-0997-R-2024  
41S 16465-00

**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, conclusion 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. Darlene L. Henke and Richard C. Henke (the Henkes) are the record owners of irrigation claim 41S 16465-00.
2. Claim 41S 16465-00 was decreed with DNRC issue remarks:
  - 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). 30045-179-76 , 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.
3. The Henkes were ordered to meet with a DNRC employee to address the issue remarks decreed on claim 41S 16465-00. (Doc.<sup>1</sup>1.00).
4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on January 28, 2025. (Doc. 3.00). The Memorandum indicated Ms. Bluhm spoke with Darlene L. Henke on January 14, 2025. Ms. Bluhm reported she reviewed the Judith Basin County Water Resources Survey field notes and aerial photos to prepare her Memorandum. Ms. Bluhm reported that she confirmed the decreed place of use, flow rate, and point of diversion; she recommended the issue remarks be removed from claim 41S 16465-00.
5. On January 30, 2025, an Order was issued with the caption for *this* Case, but pertaining to a claim not in this Case. The Order was issued in error and may be disregarded.

### 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

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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.

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.

RECOMMENDATION

1. The issue remarks should be removed from claim 41S 16465-00.  
An abstract is attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Richard C. Henke  
Darlene L. Henke  
PO Box 167  
Hobson, MT 59452

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

**Water Right Number:** 41S 16465-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DARLENE L HENKE  
PO BOX 167  
HOBSON, MT 59452  
  
RICHARD C HENKE  
PO BOX 167  
HOBSON, MT 59452-0167

**Priority Date:** NOVEMBER 17, 1916

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 255.82 GPM

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 15.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF LAKE CREEK

**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		SESWSW	32	14N	14E	JUDITH BASIN

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

**Diversion Means:** HEADGATE

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

**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	15.00		N2SWSW	32	14N	14E	JUDITH BASIN

**Total:** 15.00