

Montana Water Court
P.O. Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
07/30/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0738-R-2024
Stern, Anika
12.00

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

* * * * *

CLAIMANTS: Leo J. Horan; Daniel J. Horan

OBJECTOR: Montana Attorney General

CASE 41S-0738-R-2024

41S 126226-00

41S 126227-00

41S 131710-00

41S 131711-00

41S 131712-00

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. Leo J. Horan and Daniel J. Horan (the Claimants) are the record owners of claims 41S 126226-00, 41S 126227-00, 41S 131710-00, 41S 131711-00, and 41S 131712-00.

2. Claims 41S 126226-00, 41S 126227-00, 41S 131710-00, 41S 131711-00, and 41S 131712-00 were decreed with DNRC issue remarks:

41S 126226-00:

- THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 35.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.
- 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). 30027-278-72 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

41S 126227-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41S 126227-00, 41S 131711-00, 41S 131712-00 .
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-65 AND 30045-179-67 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED APPROPRIATION RIGHT.
- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) AND THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEAR TO INDICATE 0.00 ACRES IRRIGATED.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON WEST BUFFALO CREEK WITH A PRIORITY DATE PREDATING CASE NO 1626, JUDITH BASIN COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON WEST BUFFALO CREEK WITH A PRIORITY DATE PREDATING CASE NO 756, FERGUS COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

41S 131710-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-67 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED..

41S 131711-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41S 126227-00, 41S 131711-00, 41S 131712-00.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED. USDA AERIAL PHOTOGRAPH NO(S). 30045-179-67 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41S 131712-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41S 126227-00, 41S 131711-00, 41S 131712-00.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-65 AND 30045-179-67 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) AND THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEAR TO INDICATE 0.00 ACRES IRRIGATED.
- THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

3. The Claimants were ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claims 41S 126226-00, 41S 126227-00, 41S 131710-00, 41S 131711-00, and 41S 131712-00. (Doc.¹1.00).

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

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on January 30, 2025. (Doc.² 3.00). Ms. Bluhm reported Claimant Leo Horan met with her on January 10, 2025, and Mr. Horan provided an aerial photo and a map which were submitted with the Memorandum. (Attachments 2 and 6). Ms. Bluhm also attached a field investigation report from January 11, 1999. (Attachment 3). Ms. Bluhm stated that she reviewed the Judith Basin County Water Resources Survey field notes to prepare the Memorandum along with several aerial photographs. Ms. Bluhm made recommendations for each of the claims in the Case:

- **Claim 41S 126226-00:**
 - Ms. Bluhm indicated she found no irrigation and recommended claim 41S 126226-00 be dismissed.
- **Claims 41S 126227-00, 41S 131711-00, and 41S 131712-00:**
 - Ms. Bluhm reported that Leo Horan stated that his father, the original claimant, stopped irrigating in the late 1930s due to family members being drafted for war. Mr. Horan said that irrigation started again in the 1990s. Additionally, Ms. Bluhm explained that an aerial photo taken September 24, 1955, shows dryland crop farming; Ms. Bluhm reported that none of the other aerial photographs reflected irrigation. (Attachment 2). Ms. Bluhm referenced a field investigation done by the DNRC on January 11, 1999. (Attachment 3). At the time of the field investigation, Leo Horan stated, “the water was not used for approximately 80 years” and it “had been abandoned by his father.”
 - Ms. Bluhm relied on substantially the same information for claims 41S 126227-00, 41S 131711-00, and 41S 131712-00. Ultimately, Ms. Bluhm recommended the place of use, maximum acres, and flow rate for claim 41S 126227-00 *not* be modified; and the place of use, maximum acres, flow rate, and point of diversion *not* be modified for claims 41S 131711-00 and 41S 131712-00. Ms. Bluhm did not substantiate the recommendations.
- **Claim 41S 131710-00:**
 - Ms. Bluhm reported that Leo Horan said that his father, the original claimant, stopped irrigating in the late 1930s due to family members being drafted for war. Mr. Horan reported that irrigation started again in the 1990s. Additionally, Ms. Bluhm explained that an aerial photo taken September 24, 1955, shows dryland crop farming. (Attachment 2). Ms. Bluhm was also unable to identify a ditch to support the claimed point of diversion.
 - Ms. Bluhm recommended claim 41S 131710-00 be dismissed.

5. In the January 30, 2025 Memorandum, Ms. Bluhm recommended that claims 41S 126226-00 and 41S 131712-00 be dismissed. It was unclear if Claimants Leo Horan and Daniel Horan agreed or disagreed with Ms. Bluhm's recommendation regarding claims 41S 126226-00 and 41S 131712-00. Ms. Bluhm recommended no modifications be made to the elements of claims 41S 126227-00, 41S 131710-00, and 41S 131711-00. The issue remarks decreed on claims 41S 126227-00, 41S 131710-00, and 41S 131711-00 were not addressed.

On February 5, 2025, an Order on Status of Case, Order Joining Attorney General, and Order Setting Settlement Deadline was issued pursuant to Sections 85-2-248(6) and (7). (Doc. 4.00).

6. On July 25, 2025, the Claimants and the Montana Attorney General filed a Stipulation resolving the issue remarks. (Doc. 11.00).

Pursuant to the Stipulation, claims 41S 126226-00, 41S 126227-00, 41S 131710-00, and 41S 131711-00 should be dismissed as they have been abandoned.

Pursuant to the Stipulation, the following modifications should be made to claim 41S 131712-00:

- Source Name: ~~WEST-BUFFALO-CREEK~~ ROSS FORK CREEK
- Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
1		SENW	SESW	35	34	13N 15E	JUDITH BASIN
- The issue remarks should be removed from claim 41S 131712-00.

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.

RECOMMENDATIONS

1. Claims 41S 126226-00, 41S 126227-00, 41S 131710-00, and 41S 131711-00 should be dismissed.
2. The following modifications should be made to claim 41S 131712-00:

Source Name: ~~WEST-BUFFALO-CREEK~~ ROSS FORK CREEK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENW	SESW	35	34	13N	15E JUDITH BASIN

The issue remarks should be removed from claim 41S 131712-00.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Montana Department of Justice
Alwyn Lansing
Thane Johnson
Thane.Johnson@mt.gov
Alwyn.Lansing@mt.gov
agowatercourtfilings@mt.gov

Service via USPS Mail:

Leo J. Horan
Daniel J. Horan
1611 Straw Rd
Moore, MT 59464

Service List Updated: 7/28/2025

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

Water Right Number: **41S 126226-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DANIEL J HORAN
 1611 STRAW RD
 MOORE, MT 59464

 LEO J HORAN
 1611 STRAW RD
 MOORE, MT 59464

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF LITTLE TROUT CREEK

Source Type: GROUNDWATER

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 126227-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DANIEL J HORAN
 1611 STRAW RD
 MOORE, MT 59464

 LEO J HORAN
 1611 STRAW RD
 MOORE, MT 59464

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: WEST BUFFALO 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 131710-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: DANIEL J HORAN
 1611 STRAW RD
 MOORE, MT 59464

 LEO J HORAN
 1611 STRAW RD
 MOORE, MT 59464

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: ROSS FORK 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 131711-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: DANIEL J HORAN
 1611 STRAW RD
 MOORE, MT 59464

 LEO J HORAN
 1611 STRAW RD
 MOORE, MT 59464

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: MUD 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 131712-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DANIEL J HORAN
1611 STRAW RD
MOORE, MT 59464

LEO J HORAN
1611 STRAW RD
MOORE, MT 59464

Priority Date: APRIL 10, 1888

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 7.77 CFS

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 205.00

Source Name: ROSS FORK CREEK

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		SE	35	13N	15E	JUDITH BASIN

Period of Diversion: APRIL 1 TO AUGUST 15

Diversion Means: DIKE

Period of Use: APRIL 1 TO AUGUST 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	125.00		SE	34	13N	15E	JUDITH BASIN
2	80.00		SW	35	13N	15E	JUDITH BASIN

Total: 205.00