

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

**FILED**  
06/17/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41S-1060-R-2025  
Stern, Anika  
6.00

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

\* \* \* \* \*

CLAIMANT: Layton R. Perry

**CASE 41S-1060-R-2025**  
41S 101890-00

OBJECTOR: Montana Attorney General

**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. Layton R. Perry (Perry) is the record owner of irrigation claim 41S 101890-00.

2. In Case 41S-0857-R-2024, Perry was ordered to meet with a DNRC employee to address the following issue remarks decreed on claim 41S 101890-00:

- 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). 30045-179-106 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

(Case 41S-0857-R-2024, Doc.<sup>1</sup> 1.00)

3. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating she met with Perry. (Case 41S-0857-R-2024, Doc. 2.00). Ms. Bluhm indicated she reviewed the Judith Basin County Water Resource Survey field notes and aerial photos to prepare the Memorandum. Maps and proposed abstracts were attached to the Memorandum.

Ms. Bluhm indicated that she found no irrigation during her investigation, and she recommended claim 41S 101890-00 be dismissed.

4. On February 5, 2025, Perry filed a Notice of Disagreement with DNRC's recommendation to dismiss claim 41S 101890-00. (Case 41S-0857-R-2024, Doc. 8.00).

5. Claim 41S 101890-00 was reconsolidated into Case 41S-1060-R-2025, and the State of Montana was joined as a necessary party. (Case 41S-1060-R-2025, Doc. 1.00).

6. On May 22, 2025, Perry and the State of Montana filed a Stipulation & Agreement resolving the issue remarks. ("Stipulation") (Case 41S-1060-R-2025, Doc. 5.00). Based on the Stipulation, the following modifications should be made to the elements of claim 41S 101890-00:

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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.

Flow Rate: 4.00 CFS 289.00 GPM  
Maximum Acres: 60.00 17.00  
Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	17.00	40.00	SESW	15	14N	13E	JUDITH BASIN
2	10.00		NESWSW	16	14N	13E	JUDITH BASIN
Total:	60.00	17.00					

## PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to resolve the issues raised by each issue remark. 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. The Water Court is required to resolve all issue remarks before a final decree. §85-2-247, MCA. Under §-85-2-248(6), MCA, when an issue remark cannot be resolved through an informal meeting between the claimant and the DNRC, the Water Court must schedule proceedings to address and resolve the remark. These proceedings must include the DNRC. Section 85-2-248(7), MCA, requires joinder of the State of Montana, through the Attorney General, as a necessary party when the unresolved issues include nonperfection or abandonment.
4. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the party’s knowledge the factual contentions contained within the stipulation are supported by evidence.

Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” *United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees*, Case 42B-1, ¶ 3 at p. 14, (*Order Denying Motion* June 27, 2014). Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claim.

#### RECOMMENDATION

1. Claim 41S 101890-00 should be modified as shown in Finding of Fact No. 6.

An abstract is attached for review.

#### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service Via Electronic Mail:**

DNRC Water Resources  
Lewistown Regional Office  
steven.hamilton@mt.gov  
brandon.Ahlgren@mt.gov

Montana DOJ  
Terisa Oomens, Agency Legal Counsel  
Agency Legal Services Bureau  
Terisa.Oomens@mt.gov  
kayla.churchill@mt.gov

Oliver J Urick  
Hubble Law Firm PLLP  
PO Box 556  
Stanford, MT 59479  
406-566-2500 W  
ourick@uricklawfirm.com

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

**Water Right Number:** 41S 101890-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** LAYTON R PERRY  
6726 ACKLEY LAKE RD  
HOBSON, MT 59452-8664

**Priority Date:** DECEMBER 31, 1908

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION  
**Irrigation Type:** SPRINKLER

**Flow Rate:** 289.00 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:** 17.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF JUDITH RIVER  
**Source Type:** GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	SW	14N	13E	JUDITH BASIN

**Period of Diversion:** JUNE 1 TO OCTOBER 1

**Diversion Means:** PUMP

**Period of Use:** JUNE 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	17.00		SE	SW	14N	13E	JUDITH BASIN
Total:		17.00					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

101889-00      101890-00

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.

101890-00      101891-00