

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

CLAIMANTS: Nancy Mickelsen; Peter Mickelsen

CASE 41S-2152-R-2025

41S 139214-00

41S 139220-00

41S 139225-00

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. Nancy Mickelsen and Peter Mickelsen (the Mickelsens) are the record owners of irrigation claims 41S 139214-00, 41S 139220-00, and 41S 139225-00.

2. Claims 41S 139214-00, 41S 139220-00, and 41S 139225-00 were decreed with the following Montana Department of Natural Resources (DNRC) issue remark:

THIS CLAIM WAS INCLUDED IN A WATER COURT CASE INITIATED PRIOR TO THE ISSUANCE OF THE BASIN 41S PRELIMINARY DECREE. THE CASE WAS NOT CLOSED PRIOR TO THE ISSUANCE OF THE DECREE, THEREFORE THE ABSTRACT MAY NOT REFLECT THE CURRENT ELEMENTS OF THIS CLAIM AS ADJUDICATED BY THE WATER COURT.

The remark provides notice that the claims were included in Case DCERT 003-WC-2021. An Order Dismissing Case was issued on June 5, 2024, closing the Case without modifying elements of the claims. No objections were filed, and the issue remark does not raise an issue that requires further proceedings.

3. Claims 41S 139214-00, 41S 139220-00, and 41S 139225-00 were also decreed with the following source names:

Claim No.:	Source Name:
41S 139214-00	Sawmill Gulch
41S 139220-00	Warm Spring Creek
41S 139225-00	Unnamed Tributary of Warm Spring Creek

A DNRC issue remark was decreed on claim 41S 139214-00 indicating the source name should be “Unnamed Tributary of Warm Spring Creek” and a remark was decreed on claims 41S 139220-00 and 41S 139225-00 indicating the source name should be “Spring, Unnamed Tributary of Warm Spring Creek.”

4. An Order was issued to determine if the Mickelsens agreed with the proposed source names for claims 41S 139214-00, 41S 139220-00, and 41S 139225-00. (Doc.¹1.00). The Order indicated that if nothing were filed by the deadline, it would be

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

determined that the Mickelsens agree with the proposed source name modifications and a Master's Report would be issued.² Nothing was filed by the October 6, 2025 deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to resolve the issues raised by each issue remark. Mont. Code Ann. § 85-2-248 (2025).

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. § 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 notice-type issue remark decreed on each of the claims in this Case has served its purpose. No objections were filed, and the remark should be removed from the claims.

RECOMMENDATIONS

1. The source name for claim 41S 139214-00 should be modified to "Unnamed Tributary of Warm Spring Creek." The source name for claims 41S 139220-00 and 41S 139225-00 should be modified to "Spring, Unnamed Tributary of Warm Spring Creek."

2. The issue remarks should be removed from the claims in this Case.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Nancy Mickelsen
Peter Mickelsen
3929 Maiden Rd.
Lewistown, MT 59457-8070

² The source names proposed for claims 41S 139220-00 and 41S 139225-00 on the September 8, 2025 Order failed to reference "Spring." The reference to "Spring" is consistent with the DNRC issue remark. If the Mickelsens disagree with "Spring" being part of the source name, they should object as directed in the Notice of Filing of Master's Report.

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

Water Right Number: 41S 139214-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: NANCY MICKELSEN
3929 MAIDEN RD
LEWISTOWN, MT 59457-8070

PETER MICKELSEN
3929 MAIDEN RD
LEWISTOWN, MT 59457-8070

Priority Date: JUNE 28, 1899

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FURROW/FLOOD

***Flow Rate:** 1.14 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:** 30.00

Source Name: UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS MILLS COULEE

***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		NWNE	33	17N	19E	FERGUS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

THE PUMP SITE LOCATION VARIES DUE TO BEAVER ACTIVITY BUT IS ALWAYS WITHIN THE NWNE OF SECTION 33. WATER IS PUMPED INTO MAILBOX FIELD DITCH. THE COURSE OF THE DITCH VARIES DUE TO PLOWING BUT IS ALWAYS IN THE SAME GENERAL AREA.

Period of Use: APRIL 1 TO OCTOBER 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	30.00		N2N2	33	17N	19E	FERGUS

Total: 30.00

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.

139211-00	139212-00	139213-00	139214-00	139219-00	139222-00
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 139220-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: NANCY MICKELSEN
3929 MAIDEN RD
LEWISTOWN, MT 59457-8070

PETER MICKELSEN
3929 MAIDEN RD
LEWISTOWN, MT 59457-8070

Priority Date: NOVEMBER 3, 1882

Type of Historical Right: USE

***Purpose (Use):** IRRIGATION

Irrigation Type: NATURAL SUBIRRIGATION

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

***Volume:** 47.50 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 25.00

Source Name: SPRING, UNNAMED TRIBUTARY OF WARM SPRING 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		SESE	29	17N	19E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: SUBIRRIGATION

2		NENE	32	17N	19E	FERGUS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: SUBIRRIGATION

3		N2	33	17N	19E	FERGUS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: SUBIRRIGATION

4		SWNW	34	17N	19E	FERGUS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: SUBIRRIGATION

Period of Use: APRIL 15 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	5.00		SESE	29	17N	19E	FERGUS

2	5.00	NENE	32	17N	19E	FERGUS
3	5.00	N2	33	17N	19E	FERGUS
4	10.00	SWNW	34	17N	19E	FERGUS
Total:						
	25.00					

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.

139207-00 139218-00 139220-00

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

Water Right Number: 41S 139225-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: NANCY MICKELSEN
3929 MAIDEN RD
LEWISTOWN, MT 59457-8070

PETER MICKELSEN
3929 MAIDEN RD
LEWISTOWN, MT 59457-8070

Priority Date: SEPTEMBER 7, 1889

Type of Historical Right: USE

***Purpose (Use):** IRRIGATION

Irrigation Type: NATURAL SUBIRRIGATION

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

Volume: 13.30 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 7.00

Source Name: SPRING, UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: GROUNDWATER

ALSO KNOWN AS SULFUR SPRING

***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		SENW	34	17N	19E	FERGUS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: SUBIRRIGATION

THE POINT OF DIVERSION INCLUDES THE MARSHY AREA WHERE THE SPRING
ARISES AND THE COURSE OF THE RESULTING SPRING CREEK WEST AND SOUTH
OF THE MARSHY AREA.

Period of Use: APRIL 1 TO OCTOBER 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	3.00		SWSNW	34	17N	19E	FERGUS
2	3.00		E2SWNW	34	17N	19E	FERGUS
3	1.00		S2SWNW	34	17N	19E	FERGUS

Total: 7.00