

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

* * * * *

CLAIMANTS: J. Roger Saylor; Luke Faber; Patrick W. Leary
Marion J. Leary

CASE 41S-2354-R-2025
41S 135151-00

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. Stock claim 41S 135151-00 was claimed and decreed with 40.00 gallon per minute flow rate and the following flow rate issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

2. No objections were filed to claim 41S 135151-00.

PRINCIPLES OF LAW

1. 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.

2. The Water Court must address all issue remarks decreed a claim. Section 85-2-248, MCA.

CONCLUSION OF LAW

The flow rate issue remark decreed on claim 41S 135151-00 is not supported by evidence sufficient to overcome the prima facie status afforded the flow rate of this historically decreed claim.

RECOMMENDATION

The issue remark should be removed from claim 41S 135151-00. An abstract is enclosed for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

J. Roger Saylor
Luke Faber
1130 Redwood Rd.
Buffalo, MT 59418-8105

Patrick W. Leary
Marion J. Leary
894 Stendal Rd.
Lewistown, MT 59457-8651

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

Water Right Number: 41S 135151-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LUKE FABER
1130 REDWOOD RD
BUFFALO, MT 59418-8105

MARION J LEARY
894 STENDAL RD
LEWISTOWN, MT 59457-8651

PATRICK W LEARY
894 STENDAL RD
LEWISTOWN, MT 59457-8651

J ROGER SAYLOR
1130 REDWOOD RD
BUFFALO, MT 59418-8105

Priority Date: NOVEMBER 30, 1957

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** 40.00 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: SPRING, UNNAMED TRIBUTARY OF MUD CREEK, EAST FORK

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		NWSWSW	32	12N	15E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

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			NWSWSW	32	12N	15E	JUDITH BASIN