

Montana Water Court
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FILED
07/02/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-1117-R-2025
Stern, Anika
8.00

MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Leo G. Majerus; Linda J. Majerus

CASE 41S-1117-R-2025

41S 3451-00

41S 3455-00

41S 146438-00

41S 146439-00

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. Leo G. Majerus and Linda J. Majerus (hereinafter referred to as "The Majerus'" and "the Claimants") are the record owners of claims 41S 3451-00, 41S 3455-00, 41S 146438-00, and 41S 146439-00.

2. Claims 41S 3451-00, 41S 3455-00, 41S 146438-00, and 41S 146439-00 were decreed with Montana Department of Natural Resources and Conservation (“DNRC”) issue remarks:

41S 3451-00:

- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-62 , DATED 09/25/1979 , APPEARS TO INDICATE 14.50 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

41S 3455-00:

- THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 180.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 86.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-278-62 , DATED 09/25/1979 , APPEARS TO INDICATE 79.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON THE JUDITH RIVER WITH A PRIORITY DATE PREDATING CASE NO 982, 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 146438-00:

- THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 1 GPM.

41S 146439-00:

- THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 20.00 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 POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE 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). 30027-278-62 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

3. The Majerus' were ordered to meet with the DNRC to address unresolved issue remarks decreed on Claims 41S 3451-00, 41S 3455-00, 41S 146438-00, and 41S 146439-00.

4. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum on June 4, 2025. (Doc.¹ 5.00). Mr. Ahlgren indicated he reviewed the Fergus County Water Resource Survey and an aerial photograph to prepare the Memorandum. Mr. Ahlgren reported he met with the Claimants on April 4, 2025, and the Claimants did not agree with all his recommendations at the time of the meeting.

4. **Claim 41S 3451-00:** Mr. Ahlgren indicated he substantiated all the claimed acreage at the historical place of use, and he recommended the issue remark be removed from claim 41S 3451-00.

5. **Claim 41S 3455-00:** Mr. Ahlgren was unable to substantiate more historical irrigation than was identified during the initial examination of claim 41S 3455-00. Mr. Ahlgren recommended claim 41S 3455-00 be reduced 86.00 acres and the flow rate be reduced to 3.26 cubic feet per second (cfs), consistent with the 17.00 gallon per minute (gpm)/per acre standard set in Rule 14(b), W.R.C.E.R.:

Flow Rate: 3.26 4.20-CFS

Maximum Acres: 86.00 113.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	5.00 13.00		NWSE	27	16N	16E	FERGUS
2	43.00 56.00		SE	22	16N	16E	FERGUS
3	38.00 45.00		NE	27	16N	16E	FERGUS
Total:	113.00 86.00						

Mr. Ahlgren indicated that if his recommendations are accepted, the issue remarks decreed on claim 41S 3455-00 will be resolved.

6. **Claim 41S 146438-00:** Claim 41S 146438-00 is a filed right with a May 15, 1935 priority date. The Declaration of Vested Groundwater Rights (Form GW4) filed with the Statement of Claim, supporting the type of historical right and priority date for claim 41S 146538-00, shows the flow rate as 1.00 gpm (gallon per minute):

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

4. The amount of groundwater claimed (in miner's inches or gallons per minute) ~~#1 = 1 gallon per minute; #2 = 1 gallon per minute; #3 = 1 gallon per minute.~~

Mr. Ahlgren stated:

The Declaration of Vested Groundwater Rights (GW4 Form) submitted with this claim indicates the historic flow rate was 1.00 GPM. The claimant has shared a video (Attachment 3) with the DNRC which shows a flow rate from the claimed spring significantly higher than 1.00 GPM. According to the claimant, the bucket in the video is a 5-gallon bucket. The volume of the bucket has not been verified by the DNRC. Based on the claimant video and information, the DNRC calculates a flow rate of 38.07 GPM. ((5 GAL / 7.88 SEC) x 60 SEC) However, given the type of historical right is "FILED" and the GW4 Form reads "1 gallon per minute", the DNRC will recommend the flow rate match this description. The DNRC would consider such a large difference in flow rate as an expansion of the water right on which the claim is based. The claimant requested the DNRC include the video in the memorandum to the Court.

(Doc. 5.00). Mr. Ahlgren submitted "stills from claimants submitted video" on June 5, 2025. (Doc. 6.00).

7. **Claim 41S 146349-00:** Mr. Ahlgren was unable to substantiate any historical irrigation at the claimed place of use, and he recommended claim 41S 146349-00 be dismissed.

8. An Order was issued to determine if the Majerus' agreed or disagreed with Mr. Ahlgren's recommendations regarding the claims. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Claimants Leo G. Majerus and Linda J. Majerus agreed "with the recommendations in the Memo." (Doc. 7.00). The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. 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, ¶ 34, 375 Mont. 86, 329 P.3d 558.

3. The maximum acres, place of use, and flow rate information in the record for claim 41S 3455-00 overcomes the prima facie statement of claim and the claim should be modified consistent with the available information.

4. The point of diversion and priority date issue remarks decreed on claim 41S 3455-00 are notice-type remarks. No objections were filed, and no further proceedings are required.

5. The information in the record suggests claim 41S 14653-00 has either been abandoned or was never perfected and the claim should be dismissed.

RECOMMENDATIONS

1. Claim 41S 3451-00 requires no modifications to the elements.
2. Claim 41S 3455-00 should be modified as follows:

Flow Rate:	3.26	4.20 CFS						
Maximum Acres:	86.00	113.00						
Place of Use:								
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	5.00	13.00	NWSE	27	16N	16E	FERGUS	
2	43.00	55.00	SE	22	16N	16E	FERGUS	
3	38.00	45.00	NE	27	16N	16E	FERGUS	
Total:	113.00	86.00						

3. Claim 41S 146438-00 should be modified as follows:

Flow Rate: 1.00 10.00 GPM

4. Claim 41S 146439-00 should be dismissed.
5. The issue remarks should be removed from claims 41S 3451-00, 41S 3455-00, and 41S 146438-00.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Oliver J. Urick

Urlick Law Firm PLLC

ourick@uricklawfirm.com

(atty for Leo G. Majerus; Linda J. Majerus)

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

Water Right Number: 41S 3451-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LEO G MAJERUS
11820 HANOVER RD
LEWISTOWN, MT 59457-3906

LINDA J MAJERUS
11820 HANOVER RD
LEWISTOWN, MT 59457-3906

Priority Date: DECEMBER 31, 1917

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

Climatic Area: 3 - MODERATE

Maximum Acres: 20.00

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF LITTLE ROCK 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		E2NE	27	16N	16E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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	20.00		E2NE	27	16N	16E	FERGUS

Total: 20.00

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

Water Right Number: 41S 3455-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LEO G MAJERUS
11820 HANOVER RD
LEWISTOWN, MT 59457-3906

LINDA J MAJERUS
11820 HANOVER RD
LEWISTOWN, MT 59457-3906

Priority Date: JUNE 15, 1897

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.26 CFS

***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: 86.00

Source Name: JUDITH RIVER

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		NWNWSE	27	16N	16E	FERGUS

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

2		SWSNW	27	16N	16E	FERGUS
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Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 1

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		NWSE	27	16N	16E	FERGUS
2	43.00		SE	22	16N	16E	FERGUS
3	38.00		NE	27	16N	16E	FERGUS

Total: 86.00

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

Water Right Number: 41S 146438-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LEO G MAJERUS
11820 HANOVER RD
LEWISTOWN, MT 59457-3906

LINDA J MAJERUS
11820 HANOVER RD
LEWISTOWN, MT 59457-3906

Priority Date: MAY 15, 1935
Type of Historical Right: FILED
Purpose (Use): DOMESTIC
Flow Rate: 1.00 GPM
Volume: 4.20 AC-FT
Households: 3
Maximum Acres: 1.00
Source Name: SPRING, UNNAMED TRIBUTARY OF LOUSE 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		NENWSW	22	16N	16E	FERGUS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		PUMP				
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	1.00		SWSWNW	22	16N	16E	FERGUS
Total:		1.00					

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

Water Right Number: **41S 146439-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: LEO G MAJERUS
 11820 HANOVER RD
 LEWISTOWN, MT 59457-3906

 LINDA J MAJERUS
 11820 HANOVER RD
 LEWISTOWN, MT 59457-3906

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: LOUSE 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.