

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

CLAIMANT: Rachel M. Mikkelsen

CASE 41S-2076-R-2025

41S 135172-00

41S 135540-00

41S 135541-00

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. Rachel Mikkelsen (hereinafter “Mikkelsen” or “the Claimant”) is the record owner of claims 41S 135172-00, 41S 135537-00, 41S 135539-00, 41S 135540-00, and 41S 135541-00.

2. Claims 41S 135172-00, 41S 135537-00, 41S 135539-00, 41S 135540-00, and 41S 135541-00 were decreed with Montana Department of Natural Resources and Conservation (“DNRC”) issue remarks.

3. The Montana Dept. of Fish Wildlife and Parks (FWP) filed Notices of Intent to Appear for claims 41S 135537-00 and 41S 135539-00.

4. The November 3, 2025 Order Consolidating, Order on Status of Case and Order Setting Deadlines Pursuant to Section 85-2-248(5), MCA stated:

In this Water Master’s experience, with NOIAs such as those filed for claims 41S 135537-00 and 41S 135539-00, it is most expedient to address the issue remarks first and then set a deadline for the NOIA party to indicate whether its concerns are addressed, if appropriate. **If FWP disagrees with this approach, a statement should be filed immediately.** (emphasis in original).

(Doc.¹ 2.00).

5. Mikkelsen was ordered to meet with the DNRC to address unresolved issue remarks decreed on claims 41S 135172-00, 41S 135537-00, 41S 135539-00, 41S 135540-00, and 41S 135541-00. (Doc. 1.00).

3. On November 7, 2025, FWP filed a statement indicating that FWP has already worked closely with the claimants and:

After reviewing the claims consolidated in this case, Montana Fish, Wildlife and Parks (“FWP”) believes that claims 41S 135537-00 and 41S 135539-00 should be excluded from the deadlines pursuant to Section 85-2-248(5), MCA. The reason being, claims 41S 135537-00 and 41S 135539-00 completely overlap claim 41S 135536-00 from consolidated case 41S-0536-R-2024, and claim 41S 135538-00 from consolidated case 41S-0527-R-2024. More importantly, in consolidated cases 41S-0536-R-2024 and 41S0527-R-2024, FWP and the Claimant agreed that the

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

acres irrigated consisted of 345.2 acres. See Consolidated Case 41S-0536-R-2024 (Doc. 15), and Consolidated Case 41S0527-R-2024 (Doc. 25).

(Doc. 4.00). An Order Modifying November 3, 2025 Order and Order Reassigning Case was issued, stating the DNRC should not review the issue remarks decreed on claims 41S 135537-00 and 41S 135539-00. (Doc. 3.00).

4. Water Resource Specialist Brandon Ahlgren filed a Memorandum in Case 41S-2076-R-2025 on April 1, 2026. The Memorandum noted that Mikkelsen's attorney, Oliver Urick, had contacted the DNRC, but no meeting was set and therefore, Mr. Ahlgren was unsure of the Claimant's stance on the DNRC's recommendations. Mr. Ahlgren made recommendations for the disposition of the following issue remarks decreed on claims 41S 135172-00, 41S 135540-00, and 41S 135541-00. (Doc. 8.00):

41S 135172-00:

- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-112 , DATED 09/17/1979 , APPEARS TO INDICATE 12.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

41S 135540-00:

- 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). 30045-179-108 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

41S 135541-00:

- 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). 30045-179-108 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWNE SEC 7 TWP 14N RGE 14E JUDITH BASIN COUNTY.

5. On April 13, 2026, Mikkelsen filed a Memorandum to Resolve Issue Remarks. (Doc. 10.00). The April 13, 2026 filing indicated:

The Memorandum of DNRC Water Resources Specialist Brandon Ahlgren dated April 1, 2026 dealing with claims 41S 135172-00, 41S 135540-00, and 41S 135541-00 has been reviewed. Claimant is suggesting only minor modifications to the DNRC recommendations.

Additionally, Mikkelsen filed a Motion to Amend claim 41S 135537-00. Thereafter, claims 41S 135537-00 and 41S 135539-00 were removed from Case 41S 2076-R-2025 and reconsolidated into Case 41S-6006-R-2026. (Doc. 11.00).

6. Based on the information in the April 13, 2026 filing, it appeared that Mikkelsen did not confer with the DNRC as ordered and as contemplated by Section 85-2-248 (5), MCA and Mr. Ahlgren was not given the opportunity to review the information provide by Mikkelsen in the April 13, 2026 filing. Another Order was issued setting deadlines for Mikkelsen to confer with the DNRC to address the issue remarks decreed on claims 41S 135172-00, 41S 135540-00, and 41S 135541-00. (Doc. 12.00).

7. On July 13, 2026, Mikkelsen filed a Notice of Agreement with DNRC Memorandum, stating:

Claimant Rachel M. Mikkelsen has reviewed the Court's Order dated June 30th, 2026. Claimant Mikkelsen has agreed to accept the recommendations made by DNRC specialist Brandon Ahlgren in his Memorandum filed April 1st, 2026. Claimant Mikkelsen will not pursue the changes proposed by her to claims 41S 135172-00 and 41S 135541-00 in her Memorandum to Resolve Issue Remarks filed on April 13th, 2026. Claimant Mikkelsen agrees the Court may adopt the recommendations made by Mr. Ahlgren in his Memorandum.

(Doc. 13.00).

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 period of diversion and reservoir record issue remark decreed on claim 41S 135172-00 and the remark noting the DNRC examined 40.00 acres for claim 41S 135541-00 are notice-type remarks. No objections were filed, and no further proceedings are required.

RECOMMENDATIONS

1. Claims 41S 135172-00 and 41S 135541-00 should be modified as follows:

- **Claim 135172-00:**

Maximum Acres: 20.00 12.00
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	8.00 16.00		S2N2SE	6	14N	15E	JUDITH BASIN
2	4.00		N2S2SE	6	14N	15E	JUDITH BASIN
Total:	20.00 12.00						

- **Claim 41S 135541-00:**

Flow Rate: 166.26 488.50 GPM
Maximum Acres: 9.78 11.00
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	NENWNE	NWNWNE	7	14N	14E	JUDITH BASIN

Period of Diversion: APRIL 1 TO OCTOBER 31
Diversion Means: DIKE
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	9.78 11.00		SESE	6	14N	14E	JUDITH BASIN
Total:	11.00 9.78						

2. Claim 41S 135540-00 should be dismissed.
3. The issue remarks should be removed from claims 135172-00 and 41S 135541-00.

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: Rachel M. Mikkelsen)

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

Water Right Number: 41S 135172-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RACHEL M MIKKELSEN
PO BOX 262
HOBSON, MT 59452-0262

Priority Date: JUNE 11, 1973

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 22.30 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 12.00

Source Name: UNNAMED TRIBUTARY OF 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		SWNESE	6	14N	15E	JUDITH BASIN

***Period of Diversion:** MAY 15 TO OCTOBER 15

Diversion Means: PUMP

***Reservoir:** ONSTREAM **Reservoir Name:** HOBSON SEWER LAGOON

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESE	6	14N	15E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 15.00 FEET

Depth: 12.00 FEET

Surface Area: 2.93 ACRES

Capacity: 14.06 ACRE-FEET

Period of Use: MAY 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	8.00		S2N2SE	6	14N	15E	JUDITH BASIN
2	4.00		N2S2SE	6	14N	15E	JUDITH BASIN
Total:	12.00						

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

Water Right Number: 41S 135540-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: RACHEL M MIKKELSEN
PO BOX 262
HOBSON, MT 59452-0262

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: GROUNDWATER

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 135541-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RACHEL M MIKKELSEN
PO BOX 262
HOBSON, MT 59452-0262

Priority Date: JUNE 1, 1896

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 166.26 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: 9.78

Source Name: UNNAMED TRIBUTARY OF JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENWNE	7	14N	14E	JUDITH BASIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: DIKE

Period of Use: APRIL 1 TO OCTOBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	9.78		SESE	6	14N	14E	JUDITH BASIN
Total:	9.78						