

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

CLAIMANT: Rachel M. Mikkelsen

NOTICE OF INTENT TO APPEAR: Montana Dept. of Fish
Wildlife & Parks

CASE 41S-6006-A-2026

41S 135537-00

41S 135539-00

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 M. Mikkelsen (hereinafter "Mikkelsen" or "Claimant") is the record owner of claims 41S 135537-00 and 41S 135539-00.

2. Claims 41S 135537-00 and 41S 135539-00 were decreed with Montana Department of Natural Resources and Conservation ("DNRC") issue remarks:

41S 135537-00:

- 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 JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 343.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-108 , DATED 09/17/1979 , APPEARS TO INDICATE 383.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

41S 135539-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 343.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-108 , DATED 09/17/1979 , APPEARS TO INDICATE 383.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

3. The State of Montana Department of Fish, Wildlife and Parks (hereinafter “FWP”) filed Notices of Intent to Appear (“NOIA”) for claims 41S 135537-00 and 41S 135539-00:

Montana Fish, Wildlife and Parks seeks the resolution of DNRC’s issue remarks, as listed on the decree, in accordance with historic evidence.

4. On April 13, 2026, Mikkelsen filed a Motion to Amend the point of diversion for claim 41S 135537-00. (Doc.¹ 9.00). The Affidavit of Rod Mikkelsen was attached to the Motion to Amend as “Exhibit A.” The Motion proposes the following point of diversion Amendment to claim 41S 135537-00:

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system. The Motion to Amend and the Memorandum to Resolve Issue Remarks were filed in Case 41S-2076-R-2025. Claims 41S 135537-00 and 41S 135539-00 were removed from Case 41S-2076-R-2025 for purposes of this Master’s Report.

***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	NENW	SWSWSE	18	14N	14E	JUDITH

BASIN Period of Diversion: APRIL 1 TO OCTOBER 31
Diversion Means: HEADGATE

The Statement of Claim for claim 41S 135537-00 lists the point of diversion (“POD”) as a headgate and ditch in the SWSWSE, Sec. 14, Twp. 14N, Rge. 14E. The Judith Basin County Water Resources Survey identifies the claimed point of diversion and conveyance ditch as the Goodell Ditch. The Motion to Amend maintains:

...the Goodell Ditch was incorrectly claimed as the POD and means of conveyance, likely because of flumes conveying water over or under the adjacent Porter Ditch.

As depicted in the WRS and historical aerial imagery, The Goodell Ditch conveys water southeast of the POU and would be unable irrigate the claimed acreage. However, two flumes originate from the Goodell Ditch to convey water across the Porter Ditch. The Porter Ditch is identified in historical aerial imagery as originating in Sec. 18, Twp. 14N, Rge. 14E, where it travels northwest to cross the Utica Highway. Rod Mikkelsen, son of Claimant Rachel M. Mikkelsen, attests that the Goodell Ditch has remained unused for decades and that the correct conveyance is the Porter Ditch. Exhibit “A”, Aff. of Rod Mikkelsen, ¶¶5-8. Rod Mikkelsen further attests that his father James Mikkelsen irrigated out of the Porter Ditch. Id. at ¶10. The change to the Porter Ditch was made long before 1973.

(Doc. 10.00, at 4).

Rod Mikkelsen is Claimant Rachel M. Mikkelsen’s son. He was born in 1957 and has been involved in ranching his entire life. He states he has lived at or near Hobson Montana his entire life.

According to Mr. Mikkelsen, his parents purchased the farm/ranch from Albert Porter and the place of use described by claim 41S 135537-00 was then irrigated by flood. Mr. Mikkelsen stated that water was diverted into “what is called the Porter Ditch in the NENW of section 18, T14N, R14E, the water then traveled north to the place of use.” Mr. Mikkelsen stated that the Mikkelsen property was serviced by the Porter Ditch before his family purchased the property and it continues to provide water to the property today. Mr. Mikkelsen stated that he is familiar with the Goodell Ditch and neither he nor his family has ever used the Goodell Ditch to irrigate the places of use described by claim 41S 135537-00.

5. On April 13, 2026, Mickelsen filed a Memorandum to Resolve Issue Remarks decreed on the claims in Case 41S-2076-R-2025, including then-consolidated claims 41S 135537-00 and 41S 135539-00. (Doc. 10.00).

- **41S 135537-00:**

- Irrigated Acres/Place of Use:

- Mikkelsen agreed to reduce the place of use for claim 41S 135537-00 to 345.20 acres, consistent with the 1971 aerial photograph:

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	155.00	340.00	NW	N2	8	14N	14E JUDITH BASIN
2	147.00	408.00		NE	8	7 14N	14E JUDITH BASIN
3	43.20	45.00	S2SE	SE	5	14N	14E JUDITH BASIN
Total:		481.00					345.20

- **41S 135539-00:**

- Irrigated Acres/Place of Use:

- Mikkelsen agreed to reduce the place of use for claim 41S 135539-00 to 345.20 acres, consistent with the 1971 aerial photograph:

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	155.00	340.00	NW	N2	8	14N	14E JUDITH BASIN
2	147.00	408.00		NE	8	7 14N	14E JUDITH BASIN
3	43.20	45.00	S2SE	SE	5	14N	14E JUDITH BASIN
Total:		481.00					345.20

- Flow Rate:

- Mikkelsen also agreed to reduce the flow rate for claim 41S 135539-00 to 12.50 cfs, consistent with the 17.00 gallon per minute (gpm)/per acre standard set in Rule 14(b), W.R.C.E.R.

PRINCIPLES 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 Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights. This jurisdiction includes not only reviewing all objections to preliminary decrees pursuant to section 85-2-233, MCA, but also can

include a review of claims that have not appeared on the objection list for a Basin. The Water Court can order changes to a claim without further notice requirements, if the Court determines that the proposed change does not adversely affect other water rights, section 85-2-233 (6), MCA.

CONCLUSIONS OF LAW

1. Claimant Rachel M. Mikkelsen has provided evidence showing the point of diversion amendment overcomes the prima facie Statement of Claim.

2. The proposed point of diversion amendment to claim 41S 135537-00, as found in the Findings of Fact, is appropriate based on the evidence before the Master. Implementing the amendment will have no adverse effect on other water rights. It is therefore appropriate to make the change without the requirement of additional notice to other water users. The amendment reflects the ongoing use of water on the ground and therefore does not require further notice as provided for in Section 85-2-233(6), MCA. The point of diversion change does not constitute an expansion to the element of the claim it merely corrects the paper water right. The use of the water right on the ground has not changed.

3. Claims 41S 135537-00 and 41S 135539-00 were also decreed with remarks indicating “the combined acres” for the group of supplemental claims may need to be adjusted. Supplemental rights remarks no longer include a quantified acreage figure; the remarks are obsolete and can be removed.

RECOMMENDATION

1. The following modifications should be made to claim 41S 135537-00:

Maximum Acres: 345.20 481.00

*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	NENENW	SWSWSE	18 12	14N	14E 13E	JUDITH BASIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Maximum Acres: 345.20 481.00

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	155.00 310.00		NW N2	8	14N	14E	JUDITH BASIN
2	147.00 408.00			8 7	14N	14E	JUDITH BASIN
3	43.20 45.00		S2SE SE	5	14N	14E	JUDITH BASIN
Total:		481.00	345.20				

2. The following modifications should be made to claim 41S 135539-00:

Flow Rate:	12.50 CFS	47.47 CFS							
Maximum Acres:	345.20	461.00							
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	155.00	310.00	NW	N2	8	14N	14E	JUDITH BASIN	
2	147.00	408.00		NE	8	7	14N	14E	JUDITH BASIN
3	43.20	46.00	S2SE	SE	5	14N	14E	JUDITH BASIN	
Total:	461.00	345.20							

3. State of Montana Department of Fish, Wildlife and Parks' Notices of Intent to Appear should be dismissed.

Abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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

Water Right Number: 41S 135537-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: AUGUST 1, 1881

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.75 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: 345.20

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		NENENW	18	14N	14E	JUDITH BASIN
Period of Diversion:		APRIL 1 TO OCTOBER 31				
Diversion Means:		HEADGATE				
Period of Use:		APRIL 1 TO OCTOBER 31				
Place of Use:						

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	155.00		NW	8	14N	14E	JUDITH BASIN
2	147.00		NE	8	14N	14E	JUDITH BASIN
3	43.20		S2SE	5	14N	14E	JUDITH BASIN
Total:		345.20					

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.

135536-00135537-00135538-00135539-00

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

Water Right Number: 41S 135539-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: JUNE 15, 1936

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 12.50 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: 345.20

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

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			18	14N	14E	JUDITH BASIN
Period of Diversion:		APRIL 1 TO OCTOBER 31				
Diversion Means:		HEADGATE				
Period of Use:		APRIL 1 TO OCTOBER 31				
Place of Use:						

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1	155.00		NW	8	14N	14E	JUDITH BASIN
2	147.00		NE	8	14N	14E	JUDITH BASIN
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Total:		345.20					

Remarks:

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