

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
JUDITH RIVER BASIN (41S)  
PRELIMINARY DECREE

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CLAIMANT: Patrick E. Hickey

OBJECTOR: State of Montana Attorney General

**CASE 41S-1007-R-2024**  
41S 132821-00  
41S 30131413

**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. Patrick E. Hickey is the record owner of irrigation claim 41S 132821-00 and stock 41S 30131413.
2. Claims 41S 132821-00 and 41S 30131413 were decreed with DNRC issue remarks:

**41S 132821-00:**

- THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. OTHER WATER RIGHTS CLAIMING THIS DIVERSION CLAIM A HEADGATE AS THEIR MEANS OF DIVERSION.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-67 , DATED 09/17/1979 AND 30027-278-90, DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON EAST BUFFALO CREEK WITH A PRIORITY DATE PREDATES CASE NO 756, 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 30131413:**

- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

3. Claimant Patrick E. Hickey was ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claim 41S 132821-00. (Doc.<sup>1</sup> 1.00).

4. On February 24, 2025, DNRC Water Resources Specialist Carli Bluhm filed a Memorandum indicating Patrick E. Hickey had not contacted the DNRC. Further, Ms. Bluhm explained that she reviewed aerial photos and the Fergus County Water Resources Survey field notes to prepare the Memorandum. Ms. Bluhm stated that she found no acres of irrigation for claim 41S 132821-00 and recommended the claim be dismissed. (Doc. 3.00).

5. On February 24, 2025 Patrick E. Hickey and Hickey Ranch Inc. filed Requests for Extension in Cases 41S-1006-R-2025 and 41S-1007-R-2025. The filings requested 90- day extensions due to “personal injury and inclement weather.” (Docs. 4.00 and 5.00).

As the DNRC Memorandum had already been filed in this Case, an Order setting a 90-day deadline was set for Claimant Patrick E. Hickey to respond to the DNRC recommendation to dismiss claim 41S 132821-00 was issued. (Doc. 6.00). The Order indicated that if nothing were filed by the May 27, 2025 deadline, this Water Master would conclude that Patrick E. Hickey agreed claim 41S 132821-00 should be dismissed.

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

6. Additional extension requests were filed by the Claimant. (Docs. 7.00 and 9.00).

7. On September 22, 2025, counsel for Claimant Patrick E. Hickey filed a Response Opposing DNRC Recommendation. (Doc. 11.00). The September 22, 2025 filing indicated Claimant Patrick E. Hickey “objects to and disagrees with the DNRC’s recommendation that the water right be dismissed.” The filing explained that the property has been historically flood irrigated and continues to be flood irrigated. Further, the filing explains that the place of use, as filed, was overly broad and does not reflect historical irrigation; the filing proposed the following modification to the place of use:<sup>2</sup>

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	18.00	40.00	SWSWSW	SENE	7	18E	FERGUS
2	104.80	40.00	NWNW	SENE	18	13N	FERGUS
3	15.75	40.00	E2E2NE	SENE	13	15E	FERGUS
4	40.00		NENE		13	13N	FERGUS
<b>Total:</b>	<b>188.55</b>	<b>136.65</b>					

8. The September 22, 2025 filing proposed significant modification to the claimed place of use for claim 41S 132821-00. The State of Montana, Attorney General, was joined as a necessary party to the proceedings in Case 41S-1007-R-2024 because the unresolved issues involved nonperfection or abandonment.

9. On May 27, 2026, the parties filed a Stipulation to Resolve Objection and Issue Remarks. (Doc. 19.00). While the Stipulation references objections, no objections were filed to the claims in Case 41S-1007-R-2024.

Claimant Patrick E. Hickey and the State of Montana Attorney General stipulated that maximum acres/place of use should be reduced to the same 136.65 acres described by Claimant Patrick E. Hickey in his September 22, 2025 filing. Additionally, the parties agreed the means of diversion issue remark is correct, and the means of diversion for claim 41S 132821-00 is “ditch” aligning with other claims sharing the same point of diversion.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima

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<sup>2</sup> The text of the Stipulation identifies the place of use as being in Judith Basin County; the correct county for all place of use IDs is Fergus County.

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.

2. The Water Court is required to resolve all issue remarks before a final decree. § 85-2-247, MCA. Under Section 85-2-248(6), MCA, when an issue remark cannot be resolved through an informal meeting between the claimant and the DNRC, the Water Court must schedule proceedings to address and resolve the remark. These proceedings must include the DNRC. Section 85-2-248(7), MCA, requires joinder of the State of Montana, through the Attorney General, as a necessary party when the unresolved issues include nonperfection or abandonment.

3. The priority date remark decreed on claim 41S 132821-00 is a notice-type remark. No objections were filed, and the remark can be removed from the claim with no modifications to the priority date element.

4. The issue remark decreed on claim 41S 30131413 indicating the claim was not included in the 1984 decree provided notice that the claim was filed as an “exempt” claim under the provisions of House Bill 110 (“HB 110”) passed by the 2017 Montana Legislature (codified at § 85-2-222, MCA). HB 110 provided owners of certain exempt claims the option of filing the claims before a June 30, 2019 filing deadline.

The DNRC examined the exempt claims under its claim examination rules. Based on the DNRC examination, the issue remark was placed on the claim, providing notice that the claim did not appear in the temporary preliminary decree (“TPD”) for Basin 41S, issued in 1984, because the TPD predated the exempt claim filing deadline.

The claim did not receive objections during the objection periods. Absent objections, the issue remark does not raise factual or legal issues that need to be addressed and the remark can be removed.

### RECOMMENDATIONS

1. Claim 41S 132821-00 should be modified as follows:

<b>Maximum Acres:</b>	<del>160.00</del> 136.65
<b>Diversion Means:</b>	<del>HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE</del>

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	16.00	40.00	SWSWSW	SENW	7	48	13N 16E	FERGUS
2	104.90	40.00	NWNW	SWNW	18	13N	16E	FERGUS
3	15.75	40.00	E2E2NE	SENE	13	13N	15E	FERGUS
4	40.00			NENE	43	43N	45E	FERGUS
<b>Total:</b>	<b>180.00</b>	<b>136.65</b>						

2. The issue remarks should be removed from claims 41S 132821-00 and 41S 30131413.

Abstracts are enclosed for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

Julia J. Nordlund  
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(Atty for: Patrick E. Hickey)

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

**Water Right Number:** 41S 132821-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** PATRICK E HICKEY  
610 HICKEY LN  
MOORE, MT 59464-9511

**Priority Date:** SEPTEMBER 22, 1902

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** 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:** 4 - MODERATELY LOW

**Maximum Acres:** 136.65

**Source Name:** EAST BUFFALO 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		SENESE	32	13N	16E	FERGUS

**Period of Diversion:** APRIL 1 TO NOVEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 1 TO NOVEMBER 30

**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	16.00		SWSWSW	7	13N	16E	FERGUS
2	104.90		NWNW	18	13N	16E	FERGUS
3	15.75		E2E2NE	13	13N	15E	FERGUS

**Total:** 136.65

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

**Water Right Number:** 41S 30131413 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** PATRICK E HICKEY  
610 HICKEY LN  
MOORE, MT 59464-9511

**Priority Date:** JANUARY 1, 1881

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 30.00 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 ROSS FORK 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		NESENE	13	13N	15E	JUDITH BASIN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** SPRING BOX

MEANS OF DIVERSION INCLUDES A LIVESTOCK DIRECT FROM SOURCE.

**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			NWSWNW	18	13N	16E	FERGUS