

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

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CLAIMANT: State of Montana University System (MSU)

NOTICE OF INTENT TO APPEAR: State of Montana University  
System (MSU)

OBJECTOR: Montana Attorney General

**CASE 41S-2252-R-2025**  
41S 107287-00

**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. The State of Montana University System (hereinafter "MSU" or "Claimant") is the record owner of irrigation claim 41S 107287-00.

2. Claim 41S 107287-00 was decreed with DNRC issue remarks:
  - FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
  - THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 107287-00, 41S 128202-00 .
  - THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY ( 1963 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
  - USDA AERIAL PHOTOGRAPH NO(S). 30045-279-15 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
  - THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
  - THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. MSU filed a Notice of Intent to Appear (NOIA) as to claim 41S 154050-00 stating:

6. State the changes that you think should be made to this claim and why.

MSU files this Notice of Intent to Appear to ensure this claim is not modified in a manner that does accurately reflect its historical and current use.



SIGNATURE OF APPEARING PARTY

4. The December 1, 2025 Order Consolidating Claim and Order Setting Deadlines Pursuant to Section 85-2-248(5), MCA set a deadline for MSU to address the issue remarks decreed on claim 41S 107287-00. (Doc.<sup>1</sup>1.00)

5. On December 29, 2025, MSU filed its Motion to Resolve Issue Remark Pursuant to Rule 85-2-248(5), MCA. (Doc. 3.00). The Motion proposed claim 41S 107287-00 be modified to a natural subirrigation claim and the issue remarks be removed.

6. On January 29, 2026, Water Resource Specialist Brandon Ahlgren filed a Memorandum regarding his review of the DNRC issue remarks. (Doc. 4.00). Mr. Ahlgren indicated that he did not substantiate any historical irrigation and the claimant did not substantiate acreage at the claimed place of use. Mr. Ahlgren stated:

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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.

The claimant’s stance is well outlined in their filing with the Court on December 29, 2025. The biggest inconsistency identified by DNRC is the natural subirrigation being requested by the claimant does not align with the map submitted with the original claim (Attachment 1). DNRC recognizes the argument that the legal land description claimed does not need modification, so it shouldn’t be seen as a relocation or amendment. DNRC does not agree with this due to the claim map being well defined and not including subirrigation.

7. On February 3, 2026, MSU filed its Second Motion to Resolve Issue Remark Pursuant to Section 85-2-248(5), MCA. (Doc. 5.00). MSU’s Second Motion requested claim 41S 107287-00 be modified as follows and the issue remarks be removed:<sup>2</sup>

Type of Historical Right: FILED USE

Flow Rate: 44.88 GPM NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION

Point of Diversion and Means of Diversion:

| ID | Cont.Lat | Qtr.Sec | Sec | Twp | Rge | County       |
|----|----------|---------|-----|-----|-----|--------------|
| 1  | N2NW     | SENWNW  | 16  | 15N | 14E | JUDITH BASIN |

Period of Diversion: APRIL 15 TO SEPTEMBER 30

Diversion Means: HEADGATE NATURAL SUBIRRIGATION

8. The February 3, 2026 filing did not state on what basis the type of historical right and priority date modified claim 41S 107287-00 would be based, if the modification were to be accepted and the issue remarks were left unresolved.

9. On February 23, 2026, an Order Joining Attorney General and Order Setting Settlement Deadline was issued. (Doc. 6.00). The Order joined the State of Montana as a necessary party and set a deadline for the parties to file settlement documents.

10. On May 5, 2025, the parties filed their Notice of Filing of Settlement Agreement and Brief in Support of Settlement Agreement. (Doc. 7.00). The Notice explains:

Exhibit B is a Notice of Water Right. This filing shows the Montana Experiment Station of Fergus County operated in Section 16 on or before December 31, 1908. Exhibit C is a stock water right. This water right is proof that stock drank from Louse Creek in the N2NW of Section 16, TWP 15N, RGE 14E on or before December 31, 1908. These pieces of evidence establish the basis of a natural subirrigation use right adjacent to Louse Creek as it shows stock, who eat the grass produced as a result of the subirrigation, were present on the land in December of 1908. Further, in the Memorandum dated January 29, 2026, Water Resources

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<sup>2</sup> The Stipulation indicates the means of diversion should be “natural subirrigation”; the DNRC database limits the means of diversion to “subirrigation”. The flow rate remark notes that this claim is natural subirrigation.

Specialist Brandon Ahlgren stated the natural subirrigation requested by MSU “is present”.

11. Pursuant to the record, the following modifications should be made to claim 41S 107298-00:

Type of Historical Right: FILED **USE**

Flow Rate: ~~44.00 GPM~~ NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

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         | <b>N2NW</b>     | <del>SENW</del> | 16         | 15N        | 14E        | JUDITH BASIN  |

Period of Diversion: APRIL 15 TO SEPTEMBER 30

Diversion Means: HEADGATE **SUBIRRIGATION**

### PRINCIPLES OF LAW

1. The Water Court is required to resolve the issues raised by each issue remark. Mont. Code Ann. § 85-2-248.

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. 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. Section 85-2-247, MCA provides that in resolving issue remarks, the Water Court must weigh the information resulting in the issue remark against the claimed water right. Rule 17(a) of the Water Right Adjudication Rules states, “Any settlement reached by the parties is subject to review and approval by the water court.”

### CONCLUSIONS OF LAW

1. The settlement agreement should be accepted by the Court and the type of historical right, point of diversion, and means of diversion should be modified; a remark should also be added to the flow rate element.

2. Claim 41S 107298-00 was decreed with an over-filed notice of

appropriation issue remark. The other claim listed in the remark, claim 41S 128202-00, was dismissed in Case 41S-0503-R-2022, resolving the over-filed appropriation.

RECOMMENDATIONS

- 1. Claim 41S 107298-00 should be modified as follows:

Type of Historical Right: FILED **USE**  
Flow Rate: ~~44.00 GPM~~ NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.  
Point of Diversion and Means of Diversion:  

| ID | Govt Lot    | Qtr Sec           | Sec | Twp | Rge | County       |
|----|-------------|-------------------|-----|-----|-----|--------------|
| 1  | <b>N2NW</b> | <del>SENWNW</del> | 16  | 15N | 14E | JUDITH BASIN |

  
Period of Diversion: APRIL 15 TO SEPTEMBER 30  
Diversion Means: HEADGATE **SUBIRRIGATION**

- 2. The issue remarks should be removed from claim 41S 107298-00.

An 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 107287-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** MONTANA, STATE OF UNIVERSITY SYSTEM (MSU)  
OFFICE OF LEGAL COUNSEL  
MSU, 211 MONTANA HALL  
PO BOX 172420  
BOZEMAN, MT 59717-2420

**Priority Date:** DECEMBER 31, 1908

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**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:** 10.00

**Source Name:** LOUSE 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         |                 | N2NW           | 16         | 15N        | 14E        | JUDITH BASIN  |

**Period of Diversion:** APRIL 15 TO SEPTEMBER 30

**Diversion Means:** SUBIRRIGATION

**Period of Use:** APRIL 15 TO SEPTEMBER 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         | 10.00        |                 | N2NW           | 16         | 15N        | 14E        | JUDITH BASIN  |

**Total:** 10.00