

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

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

CLAIMANTS: Charles S. & Karen L. Thomas Living Trust;
James E. McCollum

CASE 41S-2025-R-2025

41S 104323-00

41S 162222-00

NOTICE OF INTENT TO APPEAR: Henry Wertheimer;
Jane Wertheimer;
Montana Dept. of Fish
Wildlife and Parks

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. James E. McCollum is the record owner of claim 41S 104323-00, and the Charles S. & Karen L. Thomas Living Trust is the record owner of claim 41S 162222-00.

2. The Montana Department of Fish Wildlife & Parks (“DFWP”), Henry Wertheimer, and Jane Wertheimer filed Notices of Intent to Appear to claim 41S 104323-00.

James E. McCollum and the Charles S. & Karen L. Thomas Living Trust were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on the claims in this Case:

41S 104323-00:

- THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 260 MINER'S INCHES DECREED IN CASE NO. 982 , FERGUS COUNTY. 40A 104323-00, 40A 162222-00.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 215.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-106 AND 30045-179-108 , DATED 09/17/1979 , APPEARS TO INDICATE 9.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

41S 162222-00

- THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 260 MINER'S INCHES DECREED IN CASE NO. 982 , FERGUS COUNTY. 40A 104323-00, 40A 162222-00.
- 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.

(Doc.¹ 1.00).

3. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum on December 5, 2025. (Doc. 5.00). Mr. Ahlgren reported he spoke with consultant Scott Irvin, working on behalf of Charles S. & Karen L. Thomas Living Trust. Mr. Ahlgren

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

indicated he reviewed the Judith Basin County Water Resources Survey and aerial photos to prepare the Memorandum.

4. **Claim 41S 104323-00:** Mr. Ahlgren explained that he examined the entire 405.00 acres that was initially claimed. Mr. Ahlgren substantiated 280.98 acres of historic irrigation and recommended the following modifications be made to claim 41S 104323-00, addressing issue remarks:

Maximum Acres:	320.00	280.98					
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	34.19	33-00	NESW	22	14N	13E	JUDITH BASIN
2	50.55	45-00	N2N2SE	22	14N	13E	JUDITH BASIN
3	7.47	7-00	SEW	22	14N	13E	JUDITH BASIN
4	66.88	67-00	S2NE	22	14N	13E	JUDITH BASIN
5	99.62	425-00	NW	23	14N	13E	JUDITH BASIN
6	22.27	36-00	N2N2SW	23	14N	13E	JUDITH BASIN
7	37.00		NE	23	14N	13E	JUDITH BASIN
Total:	320.00	280.98					

5. **Claim 41S 162222-00:** Mr. Ahlgren was aware the Charles S. & Karen L. Thomas Living Trust had filed a request to withdraw this claim and noted that the withdrawal resolved the decree exceeded remark decreed on claim 41S 104323-00.

6. An Order was issued to determine if Claimant James E. McCollum agreed or disagreed with Mr. Ahlgren’s recommendations, and to determine if the Notice of Intent to Appear concerns were resolved. (Doc. 6.00). The Order set a January 9, 2026 deadline for James E. McCollum to agree or disagree with the recommended modifications and indicated that if nothing were filed by the deadline, it would be determined that James E. McCollum agrees with the recommended modifications.² A January 9, 2026 deadline was also set for DFWP, Henry Wertheimer, and Jane Wertheimer to file statements indicating whether the proposed modifications to claim 41S 104323-00 and the withdrawal of claim 41S 162222-00 resolve their Notice of Intent to Appear concerns. The following language was included in the Order:

² The Order included a typographical error. Mr. Ahlgren’s place of use recommendations indicated the lace of use should be reduced to 280.98 acres. The proposed abstract “snips” showed the maximum acre totals as 290.98 acres – this was a typographical error, and the place of use totaled 280.98 acres as recommended by Mr. Ahlgren.

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 by James E. McCollum or the Wertheimers.

7. On December 12, 2025, DFWP filed its Statement to Water Master Anika Stern Regarding Mr. Ahlgren's December 5, 2025 Memorandum & this Courts Order. (Doc. 7.00). DFWP explains that it believes the source for claim 41S 104323-00 is Judith River, not Waite Creek, as decreed. It includes the Declaration of Andrew Brummond as Exhibit A, for explanation.

In the Declaration, Mr. Brummond states he agrees with Mr. Ahlgren's recommendations as to the place of use for claim 41S 104323-00. However, Mr. Brummond explains his familiarity with the Beezelbub Ditch supplying claim 41S 104323-00, as he previously worked for the DNRC, and reviewed a change application involving other claims on the ditch. He states the correct source is the Judith River, not Waite Creek. DFWP attached additional information additional information pointing to the Judith River as the source for Beezelbub Ditch.

8. An Order was issued on January 23, 2026, setting a deadline for Claimant James E. McCollum to agree or disagree that the source for claim 41S 104323-00 is the Judith River. The Order indicated that if nothing were filed by the February 27, 2026 deadline, it would be determined that Claimant James E. McCollum agrees the source should be modified back to the Judith River, as originally claimed. Nothing was filed.

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. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. Claim 41S 104323-00 was also decreed with a remark indicating “the combined acres” for the group of supplemental claims may need to be adjusted. Supplemental rights remarks no longer included a quantified acreage figure; the remark is obsolete and can be removed.

2. The motion to withdraw claim 41S 162222-00 resolves the issue remarks on that claim and resolves the decree exceeded remark on claim 41S 104323-00

RECOMMENDATIONS

1. The following modifications should be made to claim 41S 104323-00:

Maximum Acres:	320.00	280.98
*Source Name:	WAITE CREEK	JUDITH RIVER
Place of Use:		

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	34.19	33.00	NESW	22	14N	13E	JUDITH BASIN
2	50.55	45.00	N2N2SE	22	14N	13E	JUDITH BASIN
3	7.47	7.00	SENE	22	14N	13E	JUDITH BASIN
4	66.88	67.00	S2NE	22	14N	13E	JUDITH BASIN
5	99.62	125.00	NW	23	14N	13E	JUDITH BASIN
6	22.27	36.00	N2N2SW	23	14N	13E	JUDITH BASIN
7		37.00	NE	23	14N	13E	JUDITH BASIN
Total:	320.00	280.98					

2. The issue remarks for claim 41S 104323-00 should be removed.

3. The Notice of Intent to Appear should be dismissed.

4. Claim 41S 162222-00 should be dismissed.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Charles S. & Karen L. Thomas Living Trust
c/o Charles and Karen Thomas, Trustees
243 Springdale Ln
Hobson, MT 59452

James E. McCollum
6021 Ackley Lake Rd.
Hobson, MT 59452

Service Via Electronic Mail:

Colleen Coyle
Coyle Law Firm
colleen@coylelawmt.com
*(Atty for: Henry Wertheimer and Jane
Wertheimer)*

Montana Dept. of Fish Wildlife and Parks
Alexander R. Scolavino III
Agency Legal Counsel
alexander.scolavino@mt.gov
Audrey.Kelly@mt.gov
*(Atty for: Montana Dept. of Fish Wildlife &
Parks)*

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

Water Right Number: 41S 104323-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JAMES E MCCOLLUM
6021 ACKLEY LAKE RD
HOBSON, MT 59452

Priority Date: APRIL 30, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.50 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: 280.98

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		NWNWNW	28	14N	13E	JUDITH BASIN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: BEEZELBUB DITCH

Period of Use: APRIL 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	34.19		NESW	22	14N	13E	JUDITH BASIN
2	50.55		N2SE	22	14N	13E	JUDITH BASIN
3	7.47		SESW	22	14N	13E	JUDITH BASIN
4	66.88		S2NE	22	14N	13E	JUDITH BASIN
5	99.62		NW	23	14N	13E	JUDITH BASIN
6	22.27		N2N2SW	23	14N	13E	JUDITH BASIN

Total: 280.98

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.

104323-00

104324-00

104325-00

104326-00

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

Water Right Number: 41S 162222-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: THOMAS, CHARLES S & KAREN L LIVING TRUST
243 SPRINGDALE LANE
HOBSON, MT 59452

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: JUDITH RIVER

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.