

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

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CLAIMANT: United States, DOA Forest Service

**CASE 41S-2185-R-2025**

41S 57083-00

41S 57133-00

41S 57191-00

**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 United States, DOA Forest Service (Forest Service) is the record owner of claims 41S 57083-00, 41S 57133-00, and 41S 57191-00.

2. Domestic claim 41S 57083-00 was decreed with a 1.50 acre-feet volume and the following issue remark:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 1.35 ACRE-FEET PER YEAR.

3. Stock claim 41S 57133-00 was decreed with the source name listed as “Spring, Unnamed Tributary of Warm Springs Creek” and the following issue remark:

THE SOURCE NAME DOES NOT APPEAR TO BE STANDARDIZED. IT APPEARS THE SOURCE NAME SHOULD ACTUALLY BE SPRING, UNNAMED TRIBUTARY OF WARM SPRING CREEK.

4. Stock claim 41S 57191-00 was decreed with the point of diversion listed as:

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		NWSWSW	12	11N	10E	JUDITH BASIN

\*Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWSW	12	11N	10E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Capacity: 0.70 ACRE-FEET

And the following issue remark:

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

5. An Order was issued for the Forest Service to file a statement agreeing or disagreeing with the following proposed modifications to resolve the issue remarks decreed on claims 41S 57083-00 and 41S 57133-00:

**41S 57083-00:**

**Volume:** 1.35 4.50 AC-FT

**41S 57133-00:**

**Source Name:** SPRING, UNNAMED TRIBUTARY OF WARM SPRINGS ~~CREEK~~

The Order also set a deadline for the Forest Service to file information addressing the issue remark decreed on claim 41S 57191-00. (Doc.<sup>1</sup>1.00).

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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. On January 26, 2026, the Forest Service filed its Response to the Order addressing the issue remarks, the Declaration of Thor Burbach and a proposed abstract were attached (Attachments 1 and 2). (Doc. 5.00). The Forest Service agreed with the proposed modifications to claims 41S 57083-00 and 41S 57133-00.

Hydrologist Thor Burbach is the United States Forest Service's Region 1 Water Rights and Uses Program Manager. Mr. Burbach examined the Forest Service's original filing documents for claim 41S 57191-00, and aerial imagery from 1954 (Exhibit 2) and 1971 (Exhibit 3) and determined that the reservoir associated with the claimed point of diversion was present prior to 1960 and determined the claim would be more accurately described as an onstream reservoir. Mr. Burbach attached aerial images from 2009 and 2019 providing more clarity of the onstream reservoir described by claim 41S 57191-00.

#### 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 Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, -231(2), MCA.

#### CONCLUSION OF LAW

The information in the record regarding the means of diversion for claim 41S 57191-00 overcomes the prima facie status of the claim.

#### RECOMMENDATIONS

1. The following modification should be made to claim 41S 57083-00:

Volume: 1.35 ~~4.50~~ AC-FT

2. The following modification should be made to claim 41S 57133-00:

Source Name: SPRING, UNNAMED TRIBUTARY OF WARM SPRINGS-CREEK

3. The following modifications should be made to claim 41S 57191-00:

\*Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSWSW	12	11N	10E	JUDITH BASIN

\*Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE **DAM**

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRG FOR THIS CLAIM.

Reservoir: OFFSTREAM **ONSTREAM**

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	NWSWSW	12	11N	10E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Capacity: 0.70 ACRE-FEET

4. The issue remarks should be removed from the claim abstracts.

Abstracts are enclosed.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

Daniel Luecke, Trial Attorney  
US Dept of Justice, ENRD-NRS  
MontanaBasins.ENRD@USDOJ.GOV  
daniel.luecke@usdoj.gov  
(Atty for: United States, DOA Forest Service)

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

**Water Right Number:** 41S 57083-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804-7203

**\*Priority Date:** JULY 31, 1955

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC  
DRY WOLF GUARD STATION

**Flow Rate:** 2.00 GPM

**Volume:** 1.35 AC-FT

**Households:** 1

**Source Name:** SPRING, UNNAMED TRIBUTARY OF DRY WOLF 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		SENESE	31	15N	10E	JUDITH BASIN

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** SPRING BOX

**Period of Use:** JUNE 1 TO OCTOBER 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			NWNESE	31	15N	10E	JUDITH BASIN

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

**Water Right Number:** 41S 57133-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804-7203

**Priority Date:** JULY 1, 1910

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*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 WARM SPRING 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		SENW	3	13N	9E	JUDITH BASIN

**Period of Diversion:** JULY 1 TO AUGUST 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JULY 1 TO AUGUST 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			SENW	3	13N	9E	JUDITH BASIN

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

**Water Right Number:** 41S 57191-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804-7203

**Priority Date:** JUNE 1, 1905

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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:** UNNAMED TRIBUTARY OF SMITH 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		NWSWSW	12	11N	10E	JUDITH BASIN

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWSW	12	11N	10E	JUDITH BASIN

**Diversion to Reservoir:** DIVERSION # 1

**Capacity:** 0.70 ACRE-FEET

**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			NWSWSW	12	11N	10E	JUDITH BASIN