

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

**FILED**  
05/11/2026  
Melissa Lockman  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41S-2094-R-2025  
Stern, Anika  
10.00

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

\*\*\*\*\*

CLAIMANTS: Jeffrey & Sherri Mael Living Trust; William D.  
Newton; Kenneth M. Newton

**CASE 41S-2094-R-2025**  
41S 135338-00  
41S 135339-00

OBJECTORS: Rick J. Billadeau; United States, DOA Forest  
Service

**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 record owners of claim 41S 135338-00 are the Jeffrey & Sherri Mael Living Trust, Kenneth M. Newton, and William D. Newton ("Claimants")<sup>1</sup>; the record owner of claim 41S 135339-00 is the Jeffrey & Sherri Mael Living Trust.

<sup>1</sup> Mail has been returned from Kenneth M. Newton and William D. Newton.

2. Claims 41S 135338-00 and 41S 135339-00 were decreed with Montana Department of Natural Resources and Conservation (“DNRC”) issue remarks:

**41S 135338-00:**

- PROBLEMS MAY EXIST WITH THIS CLAIM'S PURPOSE, POINT OF DIVERSION, AND PLACE OF USE. THE OWNERSHIP MAY BE INCOMPLETE AND/OR OUTDATED. SEE MEMO TO FILE DATED 02/28/2018 FOR MORE INFORMATION.
- THE SOURCE NAME DOES NOT APPEAR TO BE STANDARDIZED. IT APPEARS THE SOURCE NAME SHOULD ACTUALLY BE JUDITH RIVER, SOUTH FORK.

**41S 135339-00:**

- BASED ON INFORMATION SUBMITTED TO THE LEWISTOWN REGIONAL OFFICE ON 02/28/2018, IT APPEARS THIS CLAIM'S POINT OF DIVERSION AND PLACE OF USE ARE INCORRECT. IT APPEARS THE SPRING AND DOMESTIC USE ARE BOTH LOCATED IN GOV'T LOT 2 IN THE SWSWNW SEC 35 TWP 12N RGE 11E JUDITH BASIN CO.

3. Rick J. Billadeau objected to claims 41S 135338-00 and 41S 135339-00; on October 8, 2025, Rick J. Billadeau withdrew both Objections unconditionally. The United States of America (USDA – Forest Service) also objected to claims 41S 135338-00 and 41S 135339-00.

4. The Jeffrey & Sherri Mael Living Trust and the Forest Service filed a Stipulation to Resolve Objections on April 23, 2026; the filing resolves the Forest Service’s Objections to claims 41S 135338-00 and 41S 135339-00. (Doc.<sup>2</sup> 9.00).

5. The stipulating parties agree that the source for claim 41S 135338-00 should be modified to reflect that it is on an “Unnamed Tributary of Burley Creek” as follows:

\*Source Name: UNNAMED TRIBUTARY OF BURLEY CREEK  
UNNAMED TRIBUTARY OF UNNAMED TRIBUTARY OF SOUTH FORK JUDITH RIVER

6. The parties stipulated that the point of diversion and place of use legal land description for claim 41S 135338-00 should be modified as follows:

| <u>Govt Lot</u>  | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|--|----------------|------------|------------|------------|---------------|
| <span style="border: 1px solid red; padding: 2px;">SWSWNW</span> | SWSWNE         | 35         | 12N        | 11E        | JUDITH BASIN  |

7. The parties stipulated that the point of diversion legal land description for claim 41S 135339-00 should be modified as follows:

| <u>ID</u>                   | <u>Govt Lot</u>    | <u>Qtr Sec</u>   | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------------------|--------------------|--|------------|------------|------------|---------------|
| 1                           | 2                  | <span style="border: 1px solid red; padding: 2px;">NWSWNE</span> | 35         | 12N        | 11E        | JUDITH BASIN  |
| <b>Period of Diversion:</b> | MAY 1 TO OCTOBER 1 |  |            |            |            |               |
| <b>Diversion Means:</b>     | FLOWING            |  |            |            |            |               |

<sup>2</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

The parties also stipulated that the place of use legal land description for claim 41S 135339-00 should be modified as follows:

| <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|--------------|-----------------|----------------|------------|------------|------------|---------------|
|              | SWSWNW          | SWSWNE         | 35         | 12N        | 11E        | JUDITH BASIN  |

The Stipulation indicates the information remark decreed on claim 41S 135339-00 should be reworded so it is consistent with the remark decreed on claim 41S 135338-00. This Water Master will recommend the remark also be reclassified as a C55 remark, like the remark on 41S 135338-00, and the remark will appear in the same location on the abstract; if the parties disagree with this recommendation, the parties should object to the Master’s Report.

#### 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.

#### CONCLUSION OF LAW

1. The information in the record overcomes the prima facie status of claims 41S 135338-00 and 41S 135339-00. Claim 41S 135338-00 should be modified to reflect the source as an Unnamed Tributary of Burley Creek; Claims 41S 135338-00 and 41S 135339-00 should be modified to reflect the point of diversion and place of use legal land descriptions are in the SWSWNW of section 35, T12N, R11E, Judith Basin County.

#### RECOMMENDATIONS

1. The source for claim 41S 135338-00 should be modified to “Unnamed Tributary of Burley Creek.” The point of diversion and place of use legal land description for claims 41S 135338-00 and 41S 135339-00 should be modified to reflect that they are in the SWSWNW of Section 35, Township 12 North, Range 11 East, Judith Basin County.

2. The issue remarks should be removed from the claim abstracts.  
Post decree abstracts are enclosed.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via USPS Mail:**

Rick J. Billadeau  
1365 Shady Ln  
Boston, KY 50107-8111

William D. Newton  
~~Building 24, Fort Missoula~~  
~~Missoula, MT 59804~~  
(No Forwarding Address)

Kenneth M. Newton  
~~USDA Forest Service Lolo National Forest~~  
~~Building 24, Fort Missoula~~  
~~Missoula, MT 59804~~  
(No Forwarding Address)

**Service Via Electronic Mail:**

Jennifer A. Najjar  
Alexa Penalosa, Trial Attorney  
Daniel Luecke  
US Dept of Justice, ENRD-NRS  
jennifer.najjar@usdoj.gov  
alexa.penalosa@usdoj.gov;  
MontanaBasins.ENRD@USDOJ.GOV  
daniel.luecke@usdoj.gov  
(Atty for: United States, DOA Forest Service)

Jeffrey & Sherri Mael Living Trust  
Jeffrey R. Mael & Sherri K. Mael  
sherri.mael@mineralstech.com

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

**Water Right Number:** 41S 135338-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** KENNETH M NEWTON  
USDA FOREST SERVICE, LOLO NATIONAL FOREST  
BUILDING 24, FORT MISSOULA  
MISSOULA, MT 59804

WILLIAM D NEWTON  
BUILDING 24, FORT MISSOULA  
MISSOULA, MT 59804

MAEL, JEFFREY & SHERRI LIVING TRUST  
558 E HUNTER RD  
SAND COULEE, MT 59472-9722

**Priority Date:** DECEMBER 31, 1961

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 10.00 GPM

**Volume:** 6.00 AC-FT

**Maximum Acres:** 3.00

**Source Name:** UNNAMED TRIBUTARY OF BURLEY 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         |                 | SWSWNW         | 35         | 12N        | 11E        | JUDITH BASIN  |

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** FLOWING

**Period of Use:** MAY 1 TO OCTOBER 1

**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         | 3.00         |                 | SWSWNW         | 35         | 12N        | 11E        | JUDITH BASIN  |

**Total:** 3.00

---

**Remarks:**

POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN THE NEWTON TRACT FROM HOMESTEAD ENTRY SURVEY NO. 156.

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

**Water Right Number:** 41S 135339-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MAEL, JEFFREY & SHERRI LIVING TRUST  
558 E HUNTER RD  
SAND COULEE, MT 59472-9722

**Priority Date:** DECEMBER 31, 1961

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**\*Source Name:** SPRING, UNNAMED TRIBUTARY OF BURLEY 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         |                 | SWSWNW         | 35         | 12N        | 11E        | JUDITH BASIN  |

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** FLOWING

**Period of Use:** MAY 1 TO OCTOBER 1

**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         |              |                 | SWSWNW         | 35         | 12N        | 11E        | JUDITH BASIN  |

**Remarks:**

POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN THE NEWTON TRACT FROM HOMESTEAD ENTRY SURVEY NO. 156.