

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

CLAIMANTS: Jerry Van Haur; Gigantic Warm Spring Inc.

CASE 41S-2143-R-2025

41S 131702-00

OBJECTOR: Montana Dept. of Fish Wildlife & Parks

41S 131703-00

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. Jerry Van Haur (“Van Haur”) is the record owner of mining claim 41S 131702-00.
2. An ownership update was processed by the Montana Department of Natural Resources and Conservation (“DNRC”) on April 1, 2026, and the present record owner of recreation claim 41S 131703-00 is Gigantic Warm Spring Inc. (“Gigantic Warm Spring”).

3. Montana Fish, Wildlife & Parks (“FWP”) objected to claims 41S 131702-00 and 41S 131703-00.

4. A Stipulation was entered into between Van Haur, Objector FWP, and potential owner Gigantic Warm Springs, Inc. on March 17, 2026. (Doc.¹ 5.00).

5. In the Stipulation, Van Haur agrees to the following:

5. The Parties agree that the source name, period of diversion, reservoir attributes, and place of use for Claim 41S 131703-00 shall be amended as indicated on the attached Proposed Abstract reflecting the actual historic use of the water right.

The parties stipulated that the source name, period of diversion, reservoir record, and place of use should be modified. However, the parties did not supply any historical evidence to support the stipulated modifications.

6. A deadline was set for the parties to:

- Indicate how and when claim 41S 131703-00 would be transferred to Gigantic Warm Spring Inc. and
- For the parties to file historical evidence supporting the stipulated modifications to claim 41S 131703-00. The Order indicated the parties should explain how the stipulated period of diversion is year-round and why the stipulated source for claim 4S 131703-00 is not an Unnamed Tributary of Warm Spring Creek, as noted in the issue remark.

(Doc. 6.00).

On April 3, 2026, FWP filed its Statement to Water Master Stern Regarding this Court's Order Dated March 23, 2026. (Doc. 7.00). The Declaration of Andrew Brummond was attached to the filing (Attachment A).

Andrew Brummond explains that he is a Water Conservation Specialist, employed full-time by FWP, and that he is “responsible for providing technical analysis and policy advice to MFWP regarding water rights and hydrology issues across Montana.”

Mr. Brummond explains the source for claim 41S 131703-00 matches the source for claim 41S 40141-00 and 41S 139435-00 and that the source for claim 41S 131702-00 includes a remark stating the source is also known as Giant Warm Spring. According to Mr. Brummond, Giant Warm Spring is the standard source name for this source of water.

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

Regarding the stipulated period of diversion, reservoir record, and place of use the parties agreed should be modified, Mr. Brummond explained:

4. The correct period of diversion for Claim 41S 131703-00 is January 1 to December 31 as the onstream reservoir sits on the spring and impounds water at all times.

5. In November, 2025, I discussed the 12 ft. depth of the pond estimated by DNRC with Alan Vanek, President of Gigantic Warm Spring, Inc., the owner of the property where the spring and pond is located. Mr. Vanek told me that the pond was slightly deeper at approximately 14 ft. deep at its historic maximum depth which is reflected in the proposed abstract submitted with the Settlement Stipulation submitted.

6. I measured the surface area to 0.64 acres as shown in Exhibit 1. Using a factor of 0.5 the capacity is calculated at 4.48 acre-feet. (14 ft. x 0.64 ac x 0.5 = 4.48 ac-ft). These values are reflected in the proposed abstract submitted with the Settlement Stipulation submitted.

(Doc. 7.00).

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Mont. Code Ann. § 85-2-227 (2025); Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

5. 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.

6. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. § 85-2-

247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. Claim 41S 131702-00 should be dismissed.
2. Modifications to the source name, period of diversion, and reservoir record have been substantiated, and the proposed modification to the place of use is consistent with the map in the claim file.
3. Claim 41S 131703-00 was decreed with notice-type remarks providing notice of an opportunity to object to the claim. The Objection to claim 41S 131703-00 has been resolved, and the remarks should be removed.

RECOMMENDATIONS

1. Claim 41S 131702-00 should be dismissed.
2. The source name, period of diversion, reservoir record, and place of use for claim 41S 131703-00 should be modified pursuant to the settlement stipulation.
3. The issue remarks should be removed from claim 41S 131703-00.

Post decree abstracts are enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Jerry Van Haur
4450 Winifred Hwy.#236
Hilger, MT 59451-9718

Gigantic Warm Spring Inc.
749 Warm Spring Ln
Lewistown, MT 59457

Service Via Electronic Mail:

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

Note: Caption and Service List Updated 5-7-26

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

Water Right Number: 41S 131702-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: JERRY VAN HAUR
4450 WINIFRED HWY #236
HILGER, MT 59451-9718

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 131703-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GIGANTIC WARM SPRING INC
749 WARM SPRING LN
LEWISTOWN, MT 59457-8101

Priority Date: JUNE 9, 1906

Type of Historical Right: USE

Purpose (Use): RECREATION
MAN MADE SWIMMING POND

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

***Volume:** THE FLOW RATE AND VOLUME ARE LIMITED TO THE MINIMUM AMOUNT NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

Source Name: GIANT WARM SPRING

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		SENWSE	19	17N	18E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: INSTREAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWSE	19	17N	18E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 15.00 FEET

Depth: 14.00 FEET

Surface Area: 0.64 ACRES

Capacity: 4.48 ACRE-FEET

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			E2SENWSE	19	17N	18E	FERGUS