

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
JUDITH RIVER BASIN (41S)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Boyd Creek Properties, LLC; CR Kendall  
Corporation

**CASE 41S-0711-R-2024**

41S 139440-00

41S 139442-00

41S 139445-00

**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 may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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. Claims 41S 139440-00, 41S 139442-00, and 41S 139445-00 are co-owned by Boyd Creek Properties, LLC and CR Kendall Corporation.

2. Claims 41S 139440-00, 41S 139442-00, and 41S 139445-00 were decreed with DNRC issue remarks; all issue remarks must be resolved.

3. Claim 41S 139440-00 was decreed with the volume element blank and a remark noting no volume was decreed.

During adjudication of the Temporary Preliminary Decree in Basin 41S, claim 41S 139440-00 was consolidated in Case 41S-71. A Master's Report was issued in Case 41S-71 in which it was determined the volume of claim 41S 139440-00 should be unquantified, but the standard volume mining remark should be added in place of a quantified volume: "THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES." It is unclear why, but the information remark was not decreed on the preliminary decree abstract for claim 41S 139440-00.

4. Claims 41S 139440-00, 41S 139442-00, and 41S 139445-00 were also decreed with issue remarks noting the point of diversions may be incorrect, the location of the headgates (claims 41S 139440-00 and 41S 139442-00) and the pump (claim 41S 139445-00) could not be identified.

The DNRC did not provide any examination notes explaining why the point of diversion issue remark was placed on the claims.

5. No objections were filed.

### **PRINCIPLE OF LAW**

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 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; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks that appear on a claim.  
Section 85-2-248, MCA.

CONCLUSION OF LAW

1. The issue remarks decreed on claims 41S 139440-00, 41S 139442-00, and 41S 139445-00 are not supported by evidence sufficient to overcome the prima facie status afforded the point of diversion of the claim.

RECOMMENDATIONS

1. The standard mining volume information remark should be added to claim 41S 139440-00.

2. The point of diversion issue remarks should be removed from claims 41S 139440-00, 41S 139442-00, and 41S 139445-00 with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Boyd Creek Properties, LLC  
PO Box 592  
Lewistown, MT 59457-0592

CR Kendall Corporation  
CR Kendall Custodial & Work Trust  
To Successor in Interest  
9773 W Maryland Dr  
Lakewood, CO 80232

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

**Water Right Number:** 41S 139440-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BOYD CREEK PROPERTIES LLC  
PO BOX 592  
LEWISTOWN, MT 59457-0592  
  
CR KENDALL CORPORATION  
CR KENDALL CUSTODIAL & WORK TRUST  
SUCCESSOR IN INTEREST TO  
9773 W MARYLAND DR  
LAKEWOOD, CO 80232

**Priority Date:** MARCH 31, 1902

**Type of Historical Right:** FILED

**Purpose (Use):** MINING

**Flow Rate:** 224.40 GPM

**\*Volume:** THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

**Source Name:** UNNAMED TRIBUTARY OF LAST CHANCE 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		NENENE	32	18N	18E	FERGUS

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

**Diversion Means:** HEADGATE

**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				32	18N	18E	FERGUS

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

**Water Right Number:** 41S 139442-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BOYD CREEK PROPERTIES LLC  
PO BOX 592  
LEWISTOWN, MT 59457-0592  
  
CR KENDALL CORPORATION  
CR KENDALL CUSTODIAL & WORK TRUST  
SUCCESSOR IN INTEREST TO  
9773 W MARYLAND DR  
LAKEWOOD, CO 80232

**Priority Date:** SEPTEMBER 9, 1901

**Type of Historical Right:** FILED

**Purpose (Use):** MINING

**Flow Rate:** 2.50 CFS

**\*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:** UNNAMED TRIBUTARY OF MEADOW 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		SWSWNE	6	17N	18E	FERGUS

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

**Diversion Means:** HEADGATE

**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			S2NE	6	17N	18E	FERGUS

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

**Water Right Number:** 41S 139445-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BOYD CREEK PROPERTIES LLC  
PO BOX 592  
LEWISTOWN, MT 59457-0592  
  
CR KENDALL CORPORATION  
CR KENDALL CUSTODIAL & WORK TRUST  
SUCCESSOR IN INTEREST TO  
9773 W MARYLAND DR  
LAKEWOOD, CO 80232

**Priority Date:** JANUARY 2, 1901

**Type of Historical Right:** FILED

**Purpose (Use):** MINING

**Flow Rate:** 80.80 GPM

**\*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:** LAST CHANCE 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		NENWSE	31	18N	18E	FERGUS

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

**Diversion Means:** PUMP

**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			SENE	31	18N	18E	FERGUS