

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: Mardyth D. Blattner; Sharon A. Graves;
Norman Ranch LLC; Shane L. Pegram

CASE 41S-0012-R-2024
41S 33557-00

OBJECTOR: United States Bureau of Land Management

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

The above-captioned claim appeared in the Preliminary Decree for the Judith River (Basin 41S) and received an objection from the United States (Bureau of Land Management) (“BLM”). The claim was consolidated into Case 41S-0012-R-2024 on

February 15, 2024, and on July 17, 2024, a Stipulation signed by the BLM and Norman Ranch LLC was filed resolving the objection (Doc.¹ 6.00). On July 19, 2024, an Order Setting Show Cause Filing Deadline was issued by this Court requiring Mardyth Blattner, Sharon Graves and Shane Pegram to file documentation stating why they failed to participate in proceedings. The Order stated that “[i]f nothing is filed it will be viewed as agreement that the Stipulation should be adopted by this Court.” Nothing was filed in response to the Order.

FINDINGS OF FACT

1. Pursuant to the Stipulation, claim 41S 135193-00 should be modified as follows:

***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 | 4 | SWNWSW | NWNWSW | 17 | 19N | 17E | FERGUS |

Reservoir: ONSTREAM

| <u>Govt Lot</u> | | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|--------|-------------------|------------|------------|------------|---------------|
| 4 | SWNWSW | NWNWSW | 17 | 19N | 17E | FERGUS |

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 | | 4 | SWNWSW | NWNWSW | 17 | 19N | 17E | FERGUS |

2. The issue remark on the claim is a ‘notice’ type remark that provides notice that the source name and means of diversion were modified by the Montana Department of Natural Resources and Conservation. The remark does not require additional proceedings to resolve and should be removed from the claim.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it

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

existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

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.

4. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

CONCLUSION OF LAW

1. Claimants Mardyth Blattner, Sharon Graves and Shane Pegram have failed to participate or otherwise show why the Stipulation should not be adopted.

2. The Stipulation between the parties resolves the objection and the modifications described therein should be adopted.

RECOMMENDATION

1. Upon review the record in this case, the claim should be modified as discussed above.

2. Modification of the claim resolves the objection. The issue remark should be removed for the reasons discussed above.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Mardyth D. Blattner
% Norman Ranch LLC
925 Hideout St.
Helena, MT 59601-5628

Sharon A. Graves
% Ray Beck
925 Hideout St.
Helena, MT 59601-5628

Norman Ranch LLC
925 Hideout St.
Helena, MT 59601-5628

Shane L. Pegram
19614 Linden Ave. N.
Seattle, WA 98133

Service via Electronic Mail:

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

Water Right Number: 41S 33557-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARDYTH D BLATTNER
% NORMAN RANCH LLC
925 HIDEOUT ST
HELENA, MT 59601-5628

SHARON A GRAVES
% RAY BECK
925 HIDEOUT ST
HELENA, MT 59601

SHANE L PEGRAM
19614 LINDEN AVE N
SEATTLE, WA 98133-3537

NORMAN RANCH LLC
925 HIDEOUT ST
HELENA, MT 59601-5628

Priority Date: AUGUST 20, 1944

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 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:** UNNAMED TRIBUTARY OF 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 | 4 | SWNWSW | 17 | 19N | 17E | FERGUS |

***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> |
|-----------------|----------------|------------|------------|------------|---------------|
| 4 | SWNWSW | 17 | 19N | 17E | FERGUS |

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 15 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 | | 4 | SWNWSW | 17 | 19N | 17E | FERGUS |