

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

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

CLAIMANTS: Robert N. Boie; Carrie Mantooth; Kelly
Mantooth; Laura S. Melton; Ross W.
Melton

CASE 41S-0698-R-2024

41S 100192-00
41S 100193-00
41S 100194-00
41S 100195-00

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. The record co-owners of domestic claims 41S 100192-00 and 41S 100193-00 are Carrie Mantooth and Kelly Mantooth. The record co-owners of stock claim 41S 100194-00 are Robert N. Boie, Carrie Mantooth, and Kelly Mantooth. And the record co-owners of stock claim 41S 100195-00 are Robert N. Boie, Carrie Mantooth, Kelly Mantooth, Laura S. Melton, and Ross W. Melton.

2. Claims 41S 100192-00 and 41S 100194-00 are multiple uses of the same historical right. Both claims were decreed with the following DNRC issue remark:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 100192-00, 41S 100194-00 .

Similarly, claims 41S 100193-00 and 41S 100195-00 are multiple uses of the same historical right. Claims 41S 100193-00 and 41S 100195-00 were decreed with the following DNRC issue remark:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 100193-00, 41S 100195-00 .

All issue remarks must be addressed.

3. The documentation supporting both sets of claims is a GW4, Declaration of Vested Groundwater Rights, which was attached to the Statements of Claims. The GW4 states the maximum amount of water claimed is “400 gal/hr”:

4. The amount of groundwater claimed (in miner's inches or gallons per minute) 1 + #2 a max of 400 gal/hr.

Conflicting information was provided on the individual Statements of Claims. The claimed flow rate for claims 41S 100192-00 and 41S 100194-00 was 10.00 gallons per minute (600.00 gallons per hour). The claimed flow rate for claims 41S 100193-00 and 41S 100195-00 was 40.00 gallons per minute (2,400 gallons per hour).

During examination of the claims, the DNRC examiner added the over-filed notice of appropriation issue remarks to the claims because they overclaimed the 400.00 gallons per hour (6.70 gallons per minute) indicated on the GW4 form. Based on the information available, it appears the flow rate for all claims should be reduced to 6.70 gallons per minute (gpm), which is approximately the equivalent of 400.00 gallons per hour.

4. An Order was issued to determine if Claimants Robert N. Boie, Carrie Mantooh, Kelly Mantooh, Laura S. Melton, and Ross W. Melton agreed or disagreed that the flow rates for claims 41S 100192-00, 41S 100193-00, 41S 100194-00, and 41S 100195-00 should be reduced to 6.70 gpm. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agree the flow rates should be reduced to 6.70 gpm. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

2. 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.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. The flow rate for claims 41S 100192-00, 41S 100193-00, 41S 100194-00, and 41S 100195-00 should be reduced to 6.70 gpm.

2. The issue remarks should be removed from claims 41S 100192-00, 41S 100193-00, 41S 100194-00, and 41S 100195-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Carrie Mantooth
Kelly Mantooth
4754 Pacer Coulee Rd
Denton, MT 59430

Robert N. Boie
1925 Deadmans Gulch
Bozeman, MT 59715-6300

Laura S. Melton
Ross W. Melton
10341 Hoosac Rd
Denton, MT 59430

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

Water Right Number: 41S 100192-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CARRIE MANTOOTH
4754 PACER COULEE RD
DENTON, MT 59430

KELLY MANTOOTH
4754 PACER COULEE RD
DENTON, MT 59430

Priority Date: DECEMBER 31, 1890

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 6.70 GPM

Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

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		NESENE	35	18N	14E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	1.00		NESENE	35	18N	14E	FERGUS

Total: 1.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

100192-00 100194-00

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

Water Right Number: 41S 100193-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CARRIE MANTOOTH
4754 PACER COULEE RD
DENTON, MT 59430

KELLY MANTOOTH
4754 PACER COULEE RD
DENTON, MT 59430

Priority Date: DECEMBER 31, 1913

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 6.70 GPM

Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

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		SWSENE	35	18N	14E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	1.00		NESENE	35	18N	14E	FERGUS

Total: 1.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

100193-00 100195-00

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

Water Right Number: 41S 100194-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT N BOIE
1925 DEADMANS GULCH
BOZEMAN, MT 59715-6300

CARRIE MANTOOTH
4754 PACER COULEE RD
DENTON, MT 59430

KELLY MANTOOTH
4754 PACER COULEE RD
DENTON, MT 59430

Priority Date: DECEMBER 31, 1890

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 6.70 GPM

***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: GROUNDWATER

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		NESENE	35	18N	14E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NESENE	35	18N	14E	FERGUS
2			SESESE	26	18N	14E	FERGUS
3			NWSENE	25	18N	14E	FERGUS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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

Water Right Number: 41S 100195-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT N BOIE
1925 DEADMANS GULCH
BOZEMAN, MT 59715-6300

CARRIE MANTOOTH
4754 PACER COULEE RD
DENTON, MT 59430

KELLY MANTOOTH
4754 PACER COULEE RD
DENTON, MT 59430

LAURA S MELTON
10341 HOOSAC RD
DENTON, MT 59430

W ROSS MELTON
10341 HOOSAC RD
DENTON, MT 59430-9453

Priority Date: DECEMBER 31, 1913

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 6.70 GPM

***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: GROUNDWATER

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		SWSENE	35	18N	14E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			SWSENE	35	18N	14E	FERGUS
2			SENWSE	35	18N	14E	FERGUS
3			SESESE	26	18N	14E	FERGUS

4

NWSENE 25 18N 14E FERGUS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

100193-00

100195-00