

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: Douglas P. Flament; Jill A. Flament

CASE 41S-0859-R-2024

41S 30131011

41S 30131015

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. Douglas P. Flament and Jill A. Flament (the Flaments) are the record owners of claims 41S 30131011 and 41S 30131015.

2. Claims 41S 30131011 and 41S 30131015 were decreed with DNRC issue remarks:

41S 30131011:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF 5.5 ACRE-FEET.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

41S 30131015:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

3. Claim 41S 30131011 was decreed with a 7.10 acre-foot volume. The volume guideline for domestic claims is 1.50 acre-feet per household and 2.5 acre-feet per acre of lawn and garden irrigation. Claim 41S 30131011 describes 2 homes and 1.00 acre of irrigation (2 houses x 1.50 + 2.50 = 5.50 acre feet).

4. An Order was issued setting a deadline for Claimants Douglas P. Flament and Jill A. Flament to agree or disagree that the volume for claim 41S 30131011-00 be reduced from 7.10 acre-feet to 5.50 acre-feet. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Douglas P. Flament and Jill A. Flament agree with the proposed volume reduction and a Master's Report would be issued. 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. Rule 19(b)(2), W.R.C.E.R. sets guideline volumes for domestic claims. A 5.50 acre-feet volume is consistent with the volume guideline for claim 41S 30131011, which claimed 1.00 acre of domestic irrigation.

4. 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.

5. The notice-type issue remarks decreed on claims 41S 30131011 and 41S 30131015 have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The volume for claim 41S 30131011 should be reduced to 5.50 acre-feet.
2. The issue remarks should be removed from claims 41S 30131011 and 41S 30131015.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Douglas P. Flament
Jill A. Flament
PO Box 1082
Lewistown, MT 59457-1082

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

Water Right Number: 41S 30131011 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: DOUGLAS P FLAMENT
PO BOX 1082
LEWISTOWN, MT 59457-1082

JILL A FLAMENT
PO BOX 1082
LEWISTOWN, MT 59457-1082

Priority Date: DECEMBER 31, 1938

Type of Historical Right: USE

***Purpose (Use):** MULTIPLE DOMESTIC

Flow Rate: 20.00 GPM

Volume: 5.50 AC-FT

Households: 2

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		NESESW	22	15N	18E	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		NESESW	22	15N	18E	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.

30131011 30131015

THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 41S 93858-00 . THEY ARE BASED ON THE SAME HISTORIC WATER RIGHT.

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

Water Right Number: 41S 30131015 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: DOUGLAS P FLAMENT
PO BOX 1082
LEWISTOWN, MT 59457-1082

JILL A FLAMENT
PO BOX 1082
LEWISTOWN, MT 59457-1082

Priority Date: DECEMBER 31, 1938

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 20.00 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		NESESW	22	15N	18E	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			NWSWSE	22	15N	18E	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.

30131011 30131015

THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 41S 93858-00 . THEY ARE BASED ON THE SAME HISTORIC WATER RIGHT.