

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

\*\*\*\*\*

CLAIMANT: Daniel Flugge

CASE 41S-0891-R-2024

41S 30131118

41S 30131124

41S 30131125

**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. Daniel Flugge is the record owner of claims 41S 30131118, 41S 30131124, and 41S 30131125.

2. Claims 41S 30131118, 41S 30131124, and 41S 30131125 were decreed with DNRC issue remarks:

**41S 30131118:**

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 30131124 and 41S 30131125:**

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

3. Claim 41S 30131118 was decreed with a 6.75 acre-foot volume. Claim 41S 30131118 describes 1 home and 1.50 acres of irrigation (1 house x 1.50 + 1.50 x 2.50 = 5.25 acre-feet).

4. An Order was issued setting a deadline for Claimant Daniel Flugge to agree or disagree that the volume for claim 41S 30131118-00 be reduced.\* The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Daniel Flugge agreed 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.

---

\* The May 20, 2024 Order included a footnote explaining the supported volume is 5.25 acre-feet, but that 5.50 acre-foot was noted in the DNRC issue remark. Upon review, the issue remark properly referenced 5.25 acre-feet. If the Claimant disagrees with the Recommendations in this Report, an Objection should be filed as noted in the Notice of Filing Master’s Report.

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. 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.

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 30131118, 41S 30131124, and 41S 30131125 have served their purpose. As no objections were filed, no further proceedings are required.

#### RECOMMENDATIONS

1. The volume for claim 41S 30131118 should be reduced to 5.25 acre-feet.
2. The issue remarks should be removed from claims 41S 30131118, 41S 30131124, and 41S 30131125.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Daniel Flugge  
PO Box 265  
Hobson, MT 59452-0265

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

**Water Right Number:** 41S 30131118 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DANIEL FLUGGE  
PO BOX 265  
HOBSON, MT 59452-0265

**\*Priority Date:** DECEMBER 31, 1940

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 14.00 GPM

**Volume:** 5.25 AC-FT

**Households:** 1

**Maximum Acres:** 1.50

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BIG COULEE

**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         |                 | SESESE         | 29         | 13N        | 14E        | JUDITH BASIN  |

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

**Diversion Means:** DEVELOPED SPRING

**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         | 1.50         |                 | SESESE         | 29         | 13N        | 14E        | JUDITH BASIN  |

**Total:** 1.50

---

**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.

30131118      30131125

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

**Water Right Number:** 41S 30131124 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DANIEL FLUGGE  
PO BOX 265  
HOBSON, MT 59452-0265

**\*Priority Date:** DECEMBER 31, 1941

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 12.00 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:** SPRING, UNNAMED TRIBUTARY OF BIG COULEE

**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         |                 | SESESE         | 29         | 13N        | 14E        | JUDITH BASIN  |

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

**Diversion Means:** DEVELOPED SPRING

**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         |              |                 | SWSWSW         | 28         | 13N        | 14E        | JUDITH BASIN  |

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

**Water Right Number:** 41S 30131125 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DANIEL FLUGGE  
PO BOX 265  
HOBSON, MT 59452-0265

**\*Priority Date:** DECEMBER 31, 1940

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 35.00 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:** SPRING, UNNAMED TRIBUTARY OF BIG COULEE

**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         |                 | SESESE         | 29         | 13N        | 14E        | JUDITH BASIN  |

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

**Diversion Means:** DEVELOPED SPRING

**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         |              |                 | SESESE         | 29         | 13N        | 14E        | JUDITH BASIN  |

**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.

30131118      30131125