

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: Donald O. Danell; Omie Danell

CASE 41S-0794-R-2024

41S 30130771

41S 30130772

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. Donald O. Danell and Omie Danell are the record owners of claims 41S 30130771 and 41S 30130772.

2. Claims 41S 30130771 and 41S 30130772 were decreed with DNRC issue remarks:

41S 30130771:

- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.
- NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

41S 30130772:

- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.
- NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS AREA IS 14.00 ACRE-FEET PER ACRE.

The Water Court is required by statute to resolve all issue remarks decreed on claims.

3. The first-listed issue remark on the claims is a notice-type remark and does not require further proceedings.

4. The second-listed issue remark decreed on claim 41S 30130771 refers to the Statement of Claim being left blank as to the type of historical right – none was chosen, and no decree, record of filing, or proof of use was provided.

5. The second-listed issue remark decreed on claim 41S 30130772 refers to no volume having been claimed. The volume guideline for this domestic claim is 14.00 acre-feet.

6. An Order was issued setting a deadline for Claimants Donald O. Danell and Omie Danell to claim a type of historical right (decreed, filed, use) as well as substantiate the claimed 1894 priority date for claim 41S 30130771, and to agree or disagree that the volume for claim 41S 30130772 should be 14.00 acre-feet. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude no additional evidence is available and she would proceed based on the record. The following language was included in the Order:

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 Water Court is required to address all issue remarks decreed on a claim. Sections 85-2-247 and 85-2-248, MCA.

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. 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. Rule 19(b), W.R.C.E.R. The guideline volume for a claim with one household and 5.00 irrigated acres is 15.00 acre-feet.

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 30130771 and 41S 30130772 have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 41S 30130771 should be a “use” right.
2. The volume for claim 41S 30130772 should be 15.00 acre-feet.
3. The issue remarks should be removed from claims 41S 30130771 and 41S 30130772.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Donald O. Danell
Omie Danell
1012 Maiden Rd
Lewistown, MT 59457

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

Water Right Number: 41S 30130771 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: DONALD O DANELL
1012 MAIDEN RD
LEWISTOWN, MT 59457

OMIE DANELL
1012 MAIDEN RD
LEWISTOWN, MT 59457

***Priority Date:** DECEMBER 31, 1894

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: WARM SPRING 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		N2NW	36	17N	18E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			N2NW	36	17N	18E	FERGUS

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

Water Right Number: 41S 30130772 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: DONALD O DANELL
1012 MAIDEN RD
LEWISTOWN, MT 59457

OMIE DANELL
1012 MAIDEN RD
LEWISTOWN, MT 59457

***Priority Date:** DECEMBER 31, 1921

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 15.00 AC-FT

Households: 1

Maximum Acres: 5.00

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		NENWNW	36	17N	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	5.00		NENWNW	36	17N	18E	FERGUS

Total: 5.00