

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

CLAIMANT: Evers Ranch Co.

NOTICE OF INTENT TO APPEAR: American Prairie
Foundation

CASE 41S-0837-R-2024
41S 30107271

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. Evers Ranch Co. stock claim 41S 30107271 was decreed with DNRC issue remarks:

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

AS OF 02/02/2018, THE PROPERTY WHERE THIS WATER GAP IS LOCATED IS OWNED BY AMERICAN PRAIRIE FOUNDATION. SEE MEMO TO FILE DATED 02/02/2018 FOR MORE INFORMATION.

The first issue remark reflects that claim 41S 30107271 was not included in the 1984 decree for this Basin.

The second issue remark reflects a February 2, 2018 Memorandum in the 41S 30107271 claim file. The Memorandum discusses a “water gap” using American Prairie Foundation (APF) land consisting of a “fenced, narrow strip of land, through APF property, that allows stock to walk” to the place of use.

Both issue remarks were added to the claim as notice-type remarks, and do not raise factual or legal issues to be addressed.

2. On September 21, 2023, American Prairie Foundation filed a Notice of Intent to Appear stating:

American Prairie Foundation wants to ensure that the water gap utilized by Evers Ranch Co. on APF property is identified correctly on the water rights.

Garrett Budds
Garrett Budds (Sep 20, 2023 15:37 MDT)

SIGNATURE OF APPEARING PARTY (YOUR NAME)

3. An Order was issued setting a deadline for APF to file a statement indicating how it intends to prosecute the Notice of Intent to Appear. The Order indicated that if nothing were filed by the June 6, 2024 deadline, this Water Master would conclude that APF did not intend to pursue the Notice of Intent to Appear and dismissal of the Notice of Intent to Appear would be recommended in the forthcoming Master's Report with no modifications to the claim. 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 must 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. The issue remarks decreed on claim 41S 30107271 have not overcome the prima facie Statement of Claim.
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.
4. The issue remarks decreed on claim 41S 30107271 are notice-type issue remarks. As no objections were filed, no further proceedings are required because of the remarks.

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41S 30107271 with no changes to the elements of the claim.
2. The Notice of Intent to Appear filed by American Prairie Reserve should be dismissed as it did not raise an issue requiring adjudication and APF did not respond by the June 6, 2024 deadline.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Evers Ranch Co.
1216 Ave. E
Billings, MT 59102

American Prairie Foundation
PO Box 908
Bozeman, MT 59771-0908

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

Water Right Number: 41S 30107271 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: EVERS RANCH CO
1216 AVE. E
BILLINGS, MT 59102

***Priority Date:** DECEMBER 31, 1912

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:** JUDITH RIVER

Source Type: SURFACE WATER
ALSO KNOWN AS MUTTON COULEE WATER GAP

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		NWNWSE	27	22N	16E	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			NWNWSE	27	22N	16E	FERGUS