

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: Kevin L. Arntzen

CASE 41S-0633 -R-2024
41S 30131311

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. Kevin L. Arntzen’s stock water claim 41S 30131311 was decreed with DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.
A PORTION OF THE CLAIMED POINT OF DIVERSION AND PLACE OF USE DOES NOT MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER 85-2-222, MCA, AND INVOLVES AN ON-STREAM RESERVOIR.

2. The Claimant was ordered to meet with the DNRC to address the point of diversion and place of use issue remark decreed on claim 41S 30131311.

3. On May 16, 2024, DNRC Water Resource Carli Bluhm filed a Memorandum stating Claimant Kevin L. Arntzen did not contact the DNRC. (Doc.* 2.00). Ms. Bluhm reported that she reviewed the scanned claim file, aerial photographs, and the 1970 Fergus County Water Resources Survey to prepare the Memorandum.

4. Ms. Bluhm reported that the initial examination of claim 41S 30131311 identified what appeared to be three onstream reservoirs, resulting in the issue remark being placed on the claim. Ms. Bluhm stated:

After investigation, the DNRC did not locate any reservoirs claimed within the claim file or on the claim map. These reservoirs are not included within this livestock direct from source right. The DNRC created a map to better reflect the claim map submitted within the file (Attachment 1).

Memorandum, pg. 2.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Section 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.

* “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

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. Ms. Bluhm has shown no onstream reservoirs exists for claim 41S 30131311, consistent with the Statement of Claim. The issue remark questioning whether claim 41S 30131311 is an exempt right due to the existence of onstream reservoirs appears to have been added to the claim in error.

3. The remark indicating claim 41S 30131311 was not included in the 1984 decree is a notice-type remark. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The issue remarks should be removed from claim 41S 30131311.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Kevin L. Arntzen
231 Christina West Rd
Hilger, MT 59451-9702

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

Water Right Number: 41S 30131311 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KEVIN L ARNTZEN
231 CHRISTINA WEST RD
HILGER, MT 59451-9702

***Priority Date:** DECEMBER 31, 1915

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:** SALT CREEK, MIDDLE FORK

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		W2E2	33	19N	18E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2			21	19N	18E	FERGUS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3			28	19N	18E	FERGUS
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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			W2E2	33	19N	18E	FERGUS
2				21	19N	18E	FERGUS
3				28	19N	18E	FERGUS