

Montana Water Court
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FILED
09/23/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0107-R-2024
Block, Nathaniel
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANTS: Infinity Thomson; Quasar Thomson

OBJECTORS: Infinity Thomson; Quasar Thomson

CASE 41S-0107-R-2024
41S 30130664

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

Claim 41S 30130664 appeared in the Preliminary Decree for the Judith River (Basin 41S) and received an objection from claimants Infinity and Quasar Thomson seeking to correct the point of diversion and a place of use for the claim.

On September 17, 2024, a status conference was held wherein the claimants reiterated their request to modify the point of diversion and a place of use from the SENENE to the SENWNW.

FINDING OF FACT

1. The objection proposes modifying claim 41S 30130664 as follows:

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	SENWNW	SENE	34	20N	16E	FERGUS

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			SWNWNW	34	20N	16E	FERGUS
2		SENWNW	SENE	34	20N	16E	FERGUS
3		2		33	20N	16E	FERGUS

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

CONCLUSIONS OF LAW

1. The proposed place of use and point of diversion modifications discussed in Finding of Fact #1 should be accepted.
2. Adoption of the place of use and point of diversion modifications resolves the objections.

RECOMMENDATIONS

1. The place of use and point of diversion should be modified as discussed above.
2. Modification of the place of use and point of diversion as discussed above resolves the objection.

A Post Decree Abstract of Water Right Claim is attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Last Order:

Infinity Thomson
Quasar Thomson
PO Box 7
Denton, MT 59430-0007

Service via Electronic Mail:

Oliver J. Urick
Urick Law Firm, PLLC
P.O. Box 556
Stanford, MT 59479
(406) 566-2500
ourick@uricklawfirm.com

Note: Service List Updated 9-17-2024

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

Water Right Number: 41S 30130664 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: INFINITY THOMSON
PO BOX 7
DENTON, MT 59430-0007

QUASAR THOMSON
PO BOX 7
DENTON, MT 59430-0007

Priority Date: MARCH 27, 1917

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: SPRING, UNNAMED TRIBUTARY OF WOLF 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		SENWNW	34	20N	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			SWNWNW	34	20N	16E	FERGUS
2			SENWNW	34	20N	16E	FERGUS
3		2		33	20N	16E	FERGUS