

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

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CLAIMANTS: Monte J. Boettger; Wade R. Boettger;  
West G. Boettger

CASE 41S-0707-R-2024  
41S 115262-00

**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, conclusion 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. Monte J. Boettger, Wade R. Boettger, and West G. Boettger (the Boettgers) are the record owners of claim 41S 115262-00.

2. Claim 41S 115262-00 was decreed with DNRC issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE FERGUS COUNTY WATER RESOURCES SURVEY ( 1970 ) APPEARS TO INDICATE 8.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30027-278-18 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

3. The Boettgers were ordered to meet with a DNRC employee to address the place of use and flow rate issue remarks decreed on claim 41S 115262-00.

3. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on July 22, 2024. (Doc.\* 2.00). The Memorandum reports Ms. Bluhm met with the Claimants on June 13, 2024. Ms. Bluhm indicated she reviewed the abstract, information in the claim file, the Fergus County and Judith Basin County Water Resources Surveys, and an aerial photograph to prepare the Memorandum; a map and proposed abstract were attached to the Memorandum. Ms. Bluhm recommended claim 41S 115262-00 be modified as follows:

<b>Maximum Acres:</b>	<b>8.00</b>	<del>12.00</del>					
<b>Place of Use:</b>							
<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	2.00	1.00	SESWSW	2	15N	17E	FERGUS
2	3.00	1.00	SWSWSW	2	15N	17E	FERGUS
3	7.00	6.00	NWSWSW	2	15N	17E	FERGUS
<b>Total:</b>	<b>8.00</b>	<del>12.00</del>					

4. An Order was issued setting a deadline to determine if the Boettgers agreed or disagreed with the recommended modifications to claim 41S 115262-00. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the

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

Boettgers agreed with the recommended modifications. Nothing was filed by the August 30, 2024 deadline.

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. 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 period of diversion and reservoir record issue remarks decreed on claim 41S 115262-00 are notice-type remarks. As no objections were filed, no further proceedings are required because of the remarks.

RECOMMENDATIONS

1. Claim 41S 115262-00 should be changed as shown in Finding of Fact Number 3.
2. The issue remarks should be removed from claim 41S 115262-00. An abstract is attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Monte J. Boettger  
Wade R. Boettger  
West G. Boettger  
c/o Monte J. Boettger  
121 Mill Stream Rd  
Lewistown, MT 59457

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

**Water Right Number:** 41S 115262-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MONTE J BOETTGER  
121 MILL STREAM RD  
LEWISTOWN, MT 59457

WADE R BOETTGER  
% BOETTGER, MONTE J  
121 MILLSTREAM RD  
LEWISTOWN, MT 59457

WEST G BOETTGER  
% BOETTGER, MONTE J  
121 MILL STREAM RD  
LEWISTOWN, MT 59457

**Priority Date:** AUGUST 31, 1966

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

**Volume:** 32.90 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 8.00

**Source Name:** COYOTE 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		SESWSW	2	15N	17E	FERGUS

**\*Period of Diversion:** MARCH 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**\*Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWSW	2	15N	17E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 17.00 FEET  
**Depth:** 14.00 FEET  
**Surface Area:** 2.48 ACRES  
**Capacity:** 13.89 ACRE-FEET

**Period of Use:** MARCH 1 TO NOVEMBER 1

**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	1.00		SESWSW	2	15N	17E	FERGUS
2	1.00		SWSWSW	2	15N	17E	FERGUS
3	6.00		NWSWSW	2	15N	17E	FERGUS
<b>Total:</b>	<u>8.00</u>						

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**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.

115262-00      115266-00