

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
01/02/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: Rebecca Rodgers  
41S-0006-R-2024  
Block, Nathaniel  
9.00

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

\*\*\*\*\*

CLAIMANTS: Billie L. Arnott; Edward F. Arnott  
Testamentary Trust; Linda J. Eklund

**CASE 41S-0006-R-2024**  
41S 139652-00

OBJECTOR: United States of America (USDA Forest Service)

---

**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

The above-captioned claim appeared in the Preliminary Decree for the Judith River (Basin 41S) and received an objection from the United States of America (USDA Forest Service) ("USFS")

The claim was decreed with the following issue remarks:

41S 139652-00

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

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY ( 1963 ) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

AERIAL PHOTOGRAPH NO(S). NA-15G-195 , DATED 09/23/1950 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The claim was consolidated into Water Court Case 41S-0006-R-2024 on February 7, 2024 (Doc.<sup>1</sup> 1.00) and a Status Conference was held on March 13, 2024. The claimants failed to appear at the conference. On July 17, 2024, the USFS filed documentation stating that the claim should be dismissed due to abandonment or non-perfection. The filing included evidence supporting the dismissal of the claim.

On July 19, 2024, this Court issued an Order Setting Show Cause Filing Deadline, requiring the claimants to file documentation showing why claim 41S 139652-000 should not be dismissed. The Order stated that "[i]f nothing is filed it will be viewed as agreement that the claim should be dismissed". Nothing was filed in response to the Order.

### FINDING OF FACT

1. The claimants have failed to participate in proceedings despite being given the opportunity to do so.

### 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(12), MCA.

---

<sup>1</sup>"Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

2. 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, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.

3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS 17, \*6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v. Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, \*6. It is within the power of this Court to terminate a water right claim if a claimant fails to participate. Rule 22. W.R.Adj.R.

### **CONCLUSIONS OF LAW**

1. The claimants have failed to participate, despite being given opportunity to do so. *See Order Consolidating Case and Setting Status Conference*, February 7, 2024; *Order Setting Show Cause Filing Deadline*, July 19, 2024.

2. The record and evidence before the Court supports the dismissal of claim 41S 139652-00 and otherwise overcome the prima facie status of the claim.

### **RECOMMENDATION**

1. Claim 41S 139652-00 should be dismissed.
2. Dismissal of the claim resolves the objection and issue remarks on the claim.

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:**

Billie L. Arnott  
948 Highland Road  
Hobson, MT 59452-8659

Edward F. Arnott Testamentary Trust  
Peggy Bergsagel & R.T. Snyder Jr. Trustees  
780 20<sup>th</sup> Road NW  
Choteau, MT 59422-9113

Linda J. Eklund  
PO Box 73  
Shawmut, MT 59078-0073

**Service via Electronic Mail:**

Jennifer A. Najjar  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 305-0476  
[Jennifer.Najjar@usdoj.gov](mailto:Jennifer.Najjar@usdoj.gov)  
MontanaBasins.ENRD@USDOJ.GOV

Alexa Penalosa, Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
[Alexa.Penalosa@usdoj.gov](mailto:Alexa.Penalosa@usdoj.gov)  
[MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

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

**Water Right Number:** 41S 139652-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** **DISMISSED**

**Owners:**

BILLIE L ARNOTT  
948 HIGHLAND RD  
HOBSON, MT 59452-8659

LINDA J EKLUND  
PO BOX 73  
SHAWMUT, MT 59078-0073

ARNOTT, EDWARD F TESTAMENTARY TRUST  
BERGSAGEL PEGGY & SNYDER R.T. JR TRUSTEES  
780 20TH RD NW  
CHOTEAU, MT 59422-9113

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** HARRISON CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

---

**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.