

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

CLAIMANTS: Larry G. Carver; Shelly Rae Carver;
Kane Ranch, LLC

CASE 41S-0751-R-2024
41S 20592-00
41S 20593-00

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, 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. Larry G. Carver and Shelly Rae Carver (the Carvers) are the record owners of claims 41S 20592-00 and 41S 20593-00; Kane Ranch, LLC is the contract for deed purchaser of claims 41S 20592-00 and 41S 20593-00.

2. Claims 41S 20592-00 and 41S 20593-00 were decreed with DNRC issue remarks:

41S 20592-00 and 41S 20593-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY(1963)APPEARS TO INDICATE 65.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO. 30045-179-159 , DATED 09/17/1979 APPEARS TO INDICATE 54.50 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME XXXXXX THE CAPACITY OF THE RESERVOIR.
- 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 MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

3. The Claimants were ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claims 41S 20592-00 and 41S 20593-00.

(Doc.¹1.00).

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating a representative for Kane Ranch, LLC met with the DNRC. (Doc. 2.00). Ms. Bluhm indicated she reviewed the Judith Basin County Water Resource Survey and an aerial

¹“Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

photo to prepare the Memorandum. Maps and proposed abstracts were attached to the Memorandum.

Claims 41S 20592-00 and 41S 20593-00 describe the same place of use and the same reservoir. Ms. Bluhm explained that she identified 127.00 acres as historically irrigated at the claimed place of use. Regarding the reservoir, Ms. Bluhm stated:

The DNRC investigated the claimed reservoir and concluded the holding capacity for this reservoir is estimated as 37.92 AC-ft. With 2.5 fills per year, the DNRC estimated the volume to be 94.80 AC-ft, as noted in the calculation below.

Surface acres x Depth x 0.4= Capacity (AC-ft)
 4.74 x 20 x 0.4 = 37.92
 37.92 x 2.5 (DNRC's guideline for fills per year) = **94.80 AC-ft**

Based on the record, it appears the following modifications are appropriate for claims 41S 20592-00 and 41S 20593-00:

41S 20592-00:

Volume: 94.80 463.00 AC-FT
Maximum Acres: 127.00 140.00

***Reservoir:** ONSTREAM **Reservoir Name:** CARVER RESERVOIR

	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		SENWSW	32	16N	12E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1
Dam Height: 17.00 FEET
Depth: 20.00 44.00 FEET
Surface Area: 4.74 ACRES
Capacity: 37.92 26.54 ACRE-FEET

Place of Use:

ID	Acres	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	97.00 110.00		NW	32	16N	12E	JUDITH BASIN
2	20.00		N2SW	32	16N	12E	JUDITH BASIN
3	10.00		E2E2NE	31	16N	12E	JUDITH BASIN
Total:	140.00	127.00					

41S 20593-00:

Volume: 94.80 370.26 AC-FT
Maximum Acres: 127.00 140.00

***Reservoir:** ONSTREAM **Reservoir Name:** CARVER RESERVOIR

	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		SENWSW	32	16N	12E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1
Dam Height: 17.00 FEET
Depth: 20.00 44.00 FEET
Surface Area: 4.74 ACRES
Capacity: 37.92 26.54 ACRE-FEET

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	97.00	110.00	NW	32	18N	12E	JUDITH BASIN
2	20.00		N2SW	32	18N	12E	JUDITH BASIN
3	10.00		E2E2NE	31	18N	12E	JUDITH BASIN
Total:	140.00	127.00					

5. A deadline was set for Claimants Larry G. Carver, Shelly Rae Carver, and Kane Ranch, LLC to agree or disagree with proposed modifications. The order indicated that if nothing were filed by the deadline, it would be concluded that Larry G. Carver, Shelly Rae Carver, and Kane Ranch, LLC agree with the proposed modifications. Nothing was filed.

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. 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 period of diversion and reservoir record issue remarks decreed on Claims 41S 20592-00 and 41S 20593-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.
5. The issue remarks decreed on claims 41S 20592-00 and 41S 20593-00

indicating the “maximum combined acres for this group of supplemental claims may require modification...” is not relevant because supplemental rights remarks on claims no longer include a quantified acreage figure.

RECOMMENDATIONS

1. Claim 41S 20592-00 should be modified as follows:

Volume: 94.80 463.00 AC-FT
 Maximum Acres: 127.00 440.00

*Reservoir: ONSTREAM Reservoir Name: CARVER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWSW	32	16N	12E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 17.00 FEET

Depth: 20.00 44.00 FEET

Surface Area: 4.74 ACRES

Capacity: 37.92 26.54 ACRE-FEET

Place of Use:

ID	Acres	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	97.00 410.00		NW	32	16N	12E	JUDITH BASIN
2	20.00		N2SW	32	16N	12E	JUDITH BASIN
3	10.00		E2E2NE	31	16N	12E	JUDITH BASIN
Total:	440.00	127.00					

2. Claim 41S 20593-00-00 should be modified as follows:

Volume: 94.80 379.25 AC-FT
 Maximum Acres: 127.00 440.00

*Reservoir: ONSTREAM Reservoir Name: CARVER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWSW	32	16N	12E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 17.00 FEET

Depth: 20.00 44.00 FEET

Surface Area: 4.74 ACRES

Capacity: 37.92 26.54 ACRE-FEET

Place of Use:

ID	Acres	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	97.00 410.00		NW	32	16N	12E	JUDITH BASIN
2	20.00		N2SW	32	16N	12E	JUDITH BASIN
3	10.00		E2E2NE	31	16N	12E	JUDITH BASIN
Total:	440.00	127.00					

3. The issue remarks should be removed from claims 41S 20592-00 and 41S 20593-00.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Larry G. Carver
Shelly Rae Carver
PO Box 1597
Seeley Lake, MT 59868

Kane Ranch, LLC
79 Fieldler Dr
Stanford, MT 59479

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

Water Right Number: 41S 20592-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: LARRY G CARVER
PO BOX 1597
SEELEY LAKE, MT 59868

SHELLY RAE CARVER
PO BOX 1597
SEELEY LAKE, MT 59868

Priority Date: APRIL 15, 1899

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

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

Volume: 94.80 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 127.00

Source Name: SKULL 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		SENWSW	32	16N	12E	JUDITH BASIN

***Period of Diversion:** MARCH 1 TO JULY 31

Diversion Means: HEADGATE

Reservoir: ONSTREAM **Reservoir Name:** CARVER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWSW	32	16N	12E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 17.00 FEET

Depth: 20.00 FEET

Surface Area: 4.74 ACRES

Capacity: 37.92 ACRE-FEET

Period of Use: MARCH 1 TO JULY 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	97.00		NW	32	16N	12E	JUDITH BASIN

2	20.00	N2SW	32	16N	12E	JUDITH BASIN
3	10.00	E2E2NE	31	16N	12E	JUDITH BASIN
Total:	<u>127.00</u>					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

20592-00 20593-00

Contract for Deed Purchasers: KANE RANCH LLC
79 FIELDLER DR
STANFORD, MT 59479

THIS WATER RIGHT IS APPURTENANT TO REAL PROPERTY THAT IS THE SUBJECT OF A CONTRACT FOR DEED. THE CONTRACT FOR DEED PURCHASER IS ENTITLED TO THE SAME NOTICE AS THE OWNER OF THE PROPERTY PURSUANT TO 85-2-232(1)(C) AND 70-20-115, MCA. REFERENCE TO THE CONTRACT FOR DEED PURCHASERS IN THIS ABSTRACT IS FOR NOTICE PURPOSES ONLY AND DOES NOT AMOUNT TO A STATEMENT REGARDING OWNERSHIP. UPON TRANSFER OF THE PROPERTY IDENTIFIED AS THE PLACE OF USE FOR THIS WATER RIGHT, THE TRANSFEREE IS RESPONSIBLE FOR UPDATING OWNERSHIP AS REQUIRED BY 85-2-423 AND -424, MCA. IN THE EVENT OF A DEFAULT RESULTING IN TERMINATION OF THE CONTRACT FOR DEED AND RELEASE OF DOCUMENTS FROM ESCROW, THE OWNERS SHALL PROVIDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH A COPY OF A QUIT CLAIM DEED OR SIMILAR INSTRUMENT INDICATING THE CONTRACT FOR DEED PURCHASERS ARE NO LONGER ENTITLED TO RECEIVE NOTICE OF PROCEEDINGS INVOLVING THIS WATER RIGHT.

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

Water Right Number: 41S 20593-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: LARRY G CARVER
PO BOX 1597
SEELEY LAKE, MT 59868

SHELLY RAE CARVER
PO BOX 1597
SEELEY LAKE, MT 59868

Priority Date: APRIL 15, 1886

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

Volume: 94.80 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 127.00

Source Name: SKULL 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>
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Capacity: 37.92 ACRE-FEET

Period of Use: MARCH 1 TO JULY 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>
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Total:	<u>127.00</u>					

Remarks:

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20592-00 20593-00

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