

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: Melville J. Jackson; Rebecca S. Jackson

CASE 41S-1044-R-2024

41S 139597-00

41S 139654-00

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. Melville J. Jackson and Rebecca S. Jackson (the Jacksons) are the record owners of claims 41S 139597-00 and 41S 139654-00.
2. Stock claim 41S 139597-00 was decreed with 25.00 gallon per minute (gpm) flow rate; domestic claim 41S 139654-00 was decreed with a 12.00 gpm flow rate.

3. Both claims were decreed with a DNRC issue remark stating:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 2.00 GPM .

All issue remarks must be resolved.

4. The issue remark decreed on claims 41S 139597-00 and 41S 139654-00 appears to be based on a GW4 form – Declaration of Vested Groundwater Rights attached to the Statements of Claims. The form states that the described springs “produce about two gallons per minute each:”

4. The amount of groundwater claimed (in miner's inches or gallons per minute) All three springs produce about two gallons per minute each

Therefore, as claimed, claims 41S 139597-00 and 41S 139654-00 overclaim the documented flow rate. Based on the information provided with the Statements of Claims, the flow rate for claims 41S 139597-00 and 41S 139654-00 should be 2.00 gpm.

5. An Order was issued to determine if the Jacksons agreed with reducing the flow rates to 2.00 gpm. The Order indicated that if nothing were filed by the December 16, 2024 deadline, it would be concluded that the Jacksons agree with the proposed flow rate reduction. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 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.

RECOMMENDATIONS

1. The flow rate for claims 41S 139597-00 and 41S 139654-00 should be reduced to 2.00 gpm.

2. The issue remarks should be removed from claims 41S 139597-00 and 41S 139654-00.

Abstracts are enclosed for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Rebecca S. Jackson
Melville J. Jackson
89795 US Hwy 87
Lewistown, MT 59457-2095

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

Water Right Number: 41S 139597-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MELVILLE J JACKSON
89795 US HWY 87
LEWISTOWN, MT 59457-2095

REBECCA S JACKSON
89795 US HWY 87
LEWISTOWN, MT 59457-2095

Priority Date: APRIL 30, 1886

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 2.00 GPM

***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 BOYD CREEK, EAST FORK

Source Type: GROUNDWATER

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		SWSWNE	11	15N	19E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

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			SWSWNE	11	15N	19E	FERGUS

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

Water Right Number: 41S 139654-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MELVILLE J JACKSON
89795 US HWY 87
LEWISTOWN, MT 59457-2095

REBECCA S JACKSON
89795 US HWY 87
LEWISTOWN, MT 59457-2095

Priority Date: APRIL 30, 1886

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 2.00 GPM

Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: SPRING, UNNAMED TRIBUTARY OF BOYD CREEK, EAST FORK

Source Type: GROUNDWATER

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	11	15N	19E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

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	1.00		NENWSW	11	15N	19E	FERGUS

Total: 1.00