

Montana Water Court
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MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER
BASIN 41S
PRELIMINARY DECREE

CLAIMANTS: Clarence W. Rogge Irrevocable Trust; J. Darrell
Johnson; Lois J. Johnson

OBJECTORS: Lois J. Johnson

CASE 41S-2056-R-2025

41S 121146-00

41S 121147-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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. The record owners of claims 41S 121146-00 and 41S 121147-00 are Darrell J. Johnson, Lois Johnson, and the Clarence W. Rogge Irrevocable Trust (Claimants).
2. Claims 41S 121146-00 and 41S 121147-00 were decreed with DNRC issue remarks:
 - BASED ON INFORMATION PROVIDED TO THE LEWISTOWN REGIONAL OFFICE IN JUNE 2018, THE POINT OF DIVERSION IS INCORRECT. THE POINT OF DIVERSION IS ACTUALLY LOCATED IN THE NESESE SEC 35 TWP 16N RGE 19E FERGUS CO. SEE CLAIM FILE FOR MORE INFORMATION.
 - BASED ON INFORMATION PROVIDED TO THE LEWISTOWN REGIONAL OFFICE IN JUNE 2018, THE PLACE OF USE IS INCORRECT. THE PLACE OF USE IS ACTUALLY LOCATED IN THE NESESE SEC 35 TWP 16N RGE 19E FERGUS CO. SEE CLAIM FILE FOR MORE INFORMATION.

Based on notes in the claim files, it appears the issue remarks resulted from a conversation a DNRC employee had with Lois J. Johnson while Ms. Johnson was performing research and discovered point of diversion and place of use legal land description errors. The DNRC employee was unable to modify the legal land descriptions and instead added issue remarks. All issue remarks must be addressed.

3. On January 25, 2023, Lois J. Johnson objected to claim 41S 121146-00, stating:

According to decree report dated July 18, 2022, place of use, Qtr section ~~SENESE~~ is incorrect, and is actually located in the NESESE Sec. 35, TWP 16N, RGE 19E Fergus County

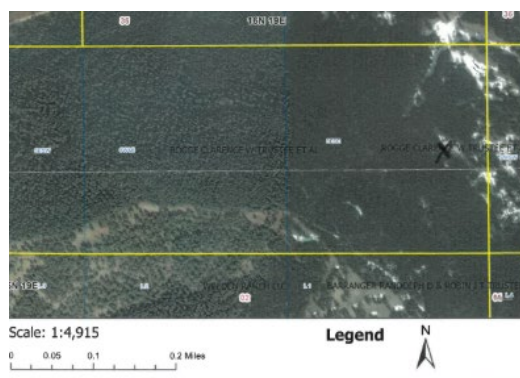
4. An Order was issued setting deadlines for Lois J. Johnson, as Objector, to file a statement agreeing or disagreeing that the following modifications to the point of diversion and place of use legal land descriptions will resolve her Objection to claim 41S 121146-00:

<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		NESESE	SENESE	35	16N	19E	FERGUS

The Order also required Objector Lois J. Johnson to file a map showing the location of the spring described by claims 41S 121146-00 and 41S 121147-00. (Doc.¹1.00). The Order also set a deadline for Claimants Darrell J. Johnson, Lois Johnson, and the Clarence W. Rogge Irrevocable Trust to file a statement agreeing or disagreeing that the point of diversion and place of use legal land descriptions for claims 41S 121146-00 and 41S 121147-00 should be modified as follows:

<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		NESESE	SENESE	35	16N	19E	FERGUS

5. On October 6, 2025, Lois J. Johnson filed a Response to the Order. (Doc. 2.00). The Response indicates that Lois J. Johnson agrees with the proposed point of diversion and place of use legal land description modifications proposed for claims 41S 121146-00 and 41S 121147-00; a map was included showing the location of the spring:



Lois J. Johnson indicated in the Response that Clarence W. Rogge was her father, and he passed away in March, 2015; Lois J. Johnson indicated she is the trustee of the Clarence W. Rogge Irrevocable Trust. Additionally, Lois J. Johnson indicated that J. Darrell Johnson was her husband, and he passed away in May of 2023. (Doc. 3.00).

On October 21, 2025, Lois J. Johnson filed an Affidavit of Trustee showing that she is the trustee of the Clarence W. Rogge Irrevocable Trust and Letters of Appointment showing that she is the personal representative of the estate of Jimmy Darrell Johnson. (Doc. 4.00).

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system. The “Doc.” references in this Report will refer to Case 43A-0011-R-2020, unless otherwise noted.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Mont. Code Ann. § 85-2-227 (2025); Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. 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.
4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, -231(2), MCA.
7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. § 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSION OF LAW

1. The information in the record overcomes the prima facie status of claims 41S 121146-00 and 41S 121147, and the claims should be modified to reflect that the legal land description of the point of diversion and place of use for both claims is in the NESESE of Section 35, Township 16 North, Range 19 East, Fergus County.

RECOMMENDATIONS

1. The point of diversion and place of use legal land description for claims

41S 121146-00 and 41S 121147-00 should be modified to reflect that they are located in the NESESE of Section 35, Township 16 North, Range 19 East, Fergus County.

2. The issue remarks should be removed from the claim abstracts.

Post decree abstracts are enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Clarence W. Rogge Irrevocable Trust
J. Darrell Johnson
Lois J. Johnson
1455 MT Hwy 91 S.
Dillon, MT 59725-7382

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

Water Right Number: 41S 121146-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: J DARRELL JOHNSON
1455 MT HIGHWAY 91 S
DILLON, MT 59725-7382

LOIS J JOHNSON
1455 MT HIGHWAY 91 S
DILLON, MT 59725-7382

ROGGE, CLARENCE W IRREVOCABLE TRUST
CLARENCE W ROGGE TRUSTEE
1455 MT HWY 91 S
DILLON, MT 59725-7382

Priority Date: MARCH 31, 1944

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 30.00 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

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		NESESE	35	16N	19E	FERGUS	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		FLOWING					
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			NESESE	35	16N	19E	FERGUS

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.

121146-00 121147-00

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

Water Right Number: 41S 121147-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

J DARRELL JOHNSON
1455 MT HIGHWAY 91 S
DILLON, MT 59725-7382

LOIS J JOHNSON
1455 MT HIGHWAY 91 S
DILLON, MT 59725-7382

ROGGE, CLARENCE W IRREVOCABLE TRUST
CLARENCE W ROGGE TRUSTEE
1455 MT HWY 91 S
DILLON, MT 59725-7382

Priority Date: MARCH 31, 1944

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 5.00 AC-FT

Households: 2

Maximum Acres: 1.50

Source Name: SPRING, UNNAMED TRIBUTARY OF BOYD CREEK

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		NESESE	35	16N	19E	FERGUS
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: FLOWING						
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	1.50		NESESE	35	16N	19E	FERGUS
Total:		1.50					

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.

121146-00 121147-00