

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

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CLAIMANTS: Melott Land Limited Partnership; Kenneth C. Rice; Elaine M. Rice

OBJECTOR: Kenneth C. Rice

**CASE 41S-2017-R-2025**  
41S 48750-00  
41S 110087-00

**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. Melott Land Limited Partnership (hereinafter "Melott") is the record owner of claim 41S 48750-00. Elaine M. Rice and Kenneth C. Rice (hereinafter "the Rices") are the record co-owners of claim 41S 110087-00.

2. Claims 41S 48750-00 and 41S 110087-00 were decreed with DNRC issue remarks:

**41S 48750-00:**

- THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 48750-00, 41S 110087-00.
- ON 11/17/2000 KENNETH C. RICE FILED AN OBJECTION TO THE OWNERSHIP AND PLACE OF USE. THIS LATE OBJECTION WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

**41S 110087-00:**

- THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41S 48750-00, 41S 110087-00.

Claims 41S 48750-00 and 41S 110087-00 both appear to be based on the same Declaration of Vested Groundwater Rights form, claiming 1.00 miner's inch of water from a spring on an unnamed tributary of Clydes Creek with a December 31, 1935 priority date; both claims claim the entirety of the original appropriation. The Montana Department of Natural Resources (DNRC) placed an issue remark on the claim noting the over-appropriation. All issue remarks must be resolved.

3. On November 17, 2000, Kenneth C. Rice, filed a late Objection to claim 41S 48750-00, indicating the following, in part:

We are objecting to Mr. Melott's water right claim number 41S-W-048750-00 based on lack of ownership of the land claimed as the place of use. Mr. Melott claims the place of use as S2NESW Section 19, Township 21 North, Range 16 East. He is not the current owner of this land and he has stated that he has never owned this land in the past. Ownership of a water right in Montana is appurtenant to the land on which it is used. Mr. Melott stated in a telephone conversation with me on October 10, 2000 that he owned the water rights on land that we purchased last summer. He also stated "that it was kind of a sneaky thing to do" in reference to filing this Statement of Claim for Existing Stock Water Rights and other claims filed on land owned by his neighbors in 1981.

Because the objection was several years overdue, an issue remark was added to claim 41S 48750-00 to ensure the objection could be addressed during the Preliminary Decree in Basin 41S.

4. A first Status Conference for Case 41S-2017-R-2025 took place on October 2, 2025 by telephone conference call. Anika M. Stern presided. Jay Melott and June Stewart appeared on behalf of the Melott Land Prtnrshp, and Kenneth C. Rice and Phyllis L. Yeager appeared. During the conference, the parties discussed the late Objection filed by Kenneth C. Rice to claim 41S 48750-00 and the issue remarks decreed on both claims in this Case. During the October 2, 2025 Conference the parties agreed the flow rate issue remark could be resolved by allotting each claim (claims 41S 48750-00 and 41S 110087-00) a 5.61 gallon per minute flow rate (1/2 of 1 miner's inch). The parties also agreed that Kenneth C. Rice's Objection could be resolved by claim 41S 48750-00 reflecting only the point of diversion on Melott Land Prtnrshp property, as it was historically used. Additionally, this Water Master suggested modifying the means of diversion from "flowing" to "livestock direct from source." (Doc. 12.00).

5. On November 25, 2025, Melott Land Prtnrshp (now Melott Land Partnership) filed a statement indicating the following:

1. Melott Land Ptnrshp agrees that the flow rate for claims 41S 48750-00 and 41S 110087-00 shall both be reduced to 5.61 gallons per minute.
2. Melott Land Ptnrshp proposes the following point of diversion and place of use legal description for water right 41S 48750-00 to be: Qtr Sec - NWSE & SW4NE4, Sec - 19, Twp - 21N, Rge - 16E, County - Fergus. See attached Map.
3. Copy of this letter has been provided to Kenneth C. Rice and Phyllis L. Yeager for their review of the proposed location in number 2 above.
4. Melott Land Ptnrshp agree that the means of diversion for claim 41S 48750-00 and 41S 110087-00 be modified from "flowing" to "livestock direct from source."

A map was included with the filing. (Doc. 4.00).

6. On December 4, 2025, Phyllis L. Yeager and Kenneth C. Rice (Yeager and Rice) filed their Combined Disagreement with the Court's Proposed Resolution of Issue Remark and Objection. (Doc. 5.00). The filing indicated Yeager and Rice changed their mind after the status conference, and they no longer agreed to reduce the flow rate for claim 4S 110087-00 to 5.61 gallons per minute to resolve the over-filed notice of appropriation issue remark decreed on claims 41S 48750-00 and 41S 110087-00. Additionally, Rice disagreed with the previously agreed resolution to the late Objection

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

as discussed at the status conference, reflecting the historical point of diversion on Melott’s property. Rice and Yeager appeared to only agree with this Water Master’s suggestion, made during the status conference, that the means of diversion for both claims be modified from “flowing” to “livestock direct from source.”

7. An Order was issued setting a deadline for the parties to file settlement documents addressing the issue remarks and the late Objection. (Doc. 6.00).

8. The parties filed a Stipulation on May 7, 2026. (Doc. 12.00). Based on the agreement of the parties, the following modifications should be made to claim 41S 48750-00, reflecting the historical use of the claim, resolving the DNRC issue remarks, and resolving Kenneth C. Rice’s late Objection:

**Flow Rate:** ~~41.20 GPM~~ **FF009** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF CLYDES CREEK

**Source Type:** ~~GROUNDWATER~~ SURFACE WATER

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

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	SWNWSE	S2NESW	19	21N	16E	FERGUS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** ~~FLOWING~~ LIVESTOCK DIRECT FROM SOURCE

**Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNWSE	S2NESW	19	21N	16E	FERGUS

CMGI: THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT THAT IS FILED IN WATER COURT CASE 41S-2017-R-2025.

Based on the agreement of the parties, the following modifications should be made to claim 41S 110087-00, reflecting the historical use of the claim, and resolving the DNRC issue remark:

**Flow Rate:** ~~43.46 GPM~~ **FF009** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF CLYDES CREEK

**Source Type:** ~~GROUNDWATER~~ SURFACE WATER

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

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNESW	19	21N	16E	FERGUS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** ~~FLOWING~~ LIVESTOCK DIRECT FROM SOURCE

## PRINCIPLES OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Mont. Code Ann. § 85-2-248 (2025).
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. § 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, ¶ 34, 375 Mont. 86, 329 P.3d 558.
3. 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.
4. 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.
5. 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

The information in the record overcomes the prima facie status of claims 41S 48750-00 and 41S 110087-00, and the claims should be modified to reflect that both claims are direct from source stock water rights from surface water springs. The point of diversion and place of use for claim 41S 48750-00 should be modified to reflect stock drinking in the SWNWSE of Section 19, Township 21 North, Range 16 East, Fergus County.

## RECOMMENDATIONS

1. The following modifications should be made to claim 41S 48750-00:



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

**Water Right Number:** 41S 48750-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MELOTT LAND LIMITED PARTNERSHIP  
227 SKYSTONE DR.  
IRVING, TX 75038-5217

**Priority Date:** DECEMBER 31, 1935

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*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 CLYDES 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		SWNWSE	19	21N	16E	FERGUS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			SWNWSE	19	21N	16E	FERGUS

**Remarks:**

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT THAT IS FILED IN WATER COURT CASE 41S-2017-R-2025.

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

**Water Right Number:** 41S 110087-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ELAINE M RICE  
PO BOX 795  
BYNUM, MT 59419-0795

KENNETH C RICE  
PO BOX 795  
BYNUM, MT 59419-0795

**Priority Date:** DECEMBER 31, 1935

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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**Source Name:** SPRING, UNNAMED TRIBUTARY OF CLYDES 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		SWNESW	19	21N	16E	FERGUS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			SWNESW	19	21N	16E	FERGUS