

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: Wertheimer A Inc.; Wertheimer H Inc.

CASE 41S-0373-R-2024

- 41S 131754-00
- 41S 131771-00
- 41S 131772-00
- 41S 131773-00
- 41S 211072-00
- 41S 211073-00
- 41S 211074-00
- 41S 30134941
- 41S 30134942
- 41S 30134945
- 41S 30134949

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 claims appeared in the Preliminary Decree for the Judith River (Basin 41S) with issue remarks.

The claims were consolidated into Case 41S-0373-R-2024 on June 21, 2024 and claimants Wertheimer A Inc. and Wertheimer H Inc. were ordered to work with the Department of Natural Resources and Conservation to resolve the issue remarks on the claims. On August 7, 2024, a Memorandum (“Memo”) was filed (Doc.¹ 2.00). Attached to the Memo were proposed abstracts as well as maps of the places of use. The Memo stated that Jane Wertheimer met with DNRC to discuss the case on behalf of both claimants. On August 20, 2024, an Order Setting Filing Deadline was issued requiring the claimants to file documentation stating their position on the recommendations in the Memo. The Order stated that “[i]f nothing is filed, it will be viewed as agreement with the recommendations and a Master’s Report will be issued”. Nothing was filed in response to the Order.

FINDINGS OF FACT

1. Claim 41S 137154-00 was decreed with the following issue remark:

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

2. The Memo recommends modifying the point of diversion as follows:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3	NWN	SW	30	14N	13E	JUDITH BASIN

The Memo states that adoption of the recommendation would resolve the issue remark on the claim.

3. Claim 41S 131771-00 was decreed with the following substantive issue remarks:

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 169.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NOS. 30045-179-106 AND 30045-179-80 , DATED 09/17/1979 , APPEAR TO INDICATE 169.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

4. The Memo recommends removal of the remarks without modification to the claim.

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

5. Claims 41S 131772-00, 41S 211072-00, 41S 211073-00 and 41S 211074-00 were decreed with the following substantive issue remarks:

THE MEANS OF DIVERSION DOES NOT APPEAR TO BE STANDARDIZED. THE MEANS OF DIVERSION APPEARS TO BE A PUMP AND PIPELINE AND/OR DITCH.

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 304.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NOS. 30045-179-80 AND 30045-179-82 , DATED 09/17/1979 , APPEAR TO INDICATE 304.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

6. The Memo recommends the modifying claims 41S 131772-00², 41S 211072-00, 41S 211073-00 and 41S 211074-00 as follows:

Maximum Acres: ~~551.00~~ **314.82**

Diversion Means: ~~PUMP/HEADGATE W/DITCH OR PIPELINE~~ **HEADGATE**

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	7.00 5.19		S2S2NE	35	14N	12E	JUDITH BASIN
2	10.00 9.29		N2N2SE	35	14N	12E	JUDITH BASIN
3	55.00 54.13		NW	36	14N	12E	JUDITH BASIN
4	20.00 29.40		NE	36	14N	12E	JUDITH BASIN
5	60.00 64.12		S2NW	29	14N	13E	JUDITH BASIN
6	130.00 121.69		E2	31	14N	13E	JUDITH BASIN
7	7.00 10.53		E2NW	31	14N	13E	JUDITH BASIN
8	25.00 14.48		SESE	30	14N	13E	JUDITH BASIN
9	20.00 5.99		SW	29	14N	13E	JUDITH BASIN
Total:	351.00 314.82						

The Memo states that adoption of the recommendations resolves the substantive issue remarks on the claims.

7. Claim 41S 131773-00 was decreed with the following substantive issue remarks:

² Claim 41S 131772-00 shares the same point of diversion as claims 41S 211072-00, 41S 211073-00 and 41S 211074-00. The Memo does not make a recommendation regarding the means of diversion for claim 41S 131772-00, this Master is electing to standardize the means of diversion between the claims. If claimants feel this modification does not reflect the historical use of claim 41S 131772-00 they should object to this Master's Report.

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 199.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NOS. 30045-179-80, 30045-179-82, AND 30045-179-106 , DATED 09/17/1979 , APPEAR TO INDICATE 225.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

- 8. The Memo recommends removal of the remarks without modification to the claim.
- 9. Claim 41S 30134941 was decreed with the following substantive issue remark:

THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.

- 10. The Memo recommends modifying claim 41S 30134941 as follows:

***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>
2			0	13N	13E	JUDITH BASIN
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						

***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			NESE	6	13N	13E	JUDITH BASIN
2				0	13N	13E	JUDITH BASIN
3			SWSE	18	13N	13E	JUDITH BASIN
4			NENE	25	13N	12E	JUDITH BASIN

The Memo states that adoption of the recommendation would resolve the remark.

- 11. The Memo recommends modifying claim 41S 30134942 as follows:

***Source Name:** SPRING, UNNAMED TRIBUTARY OF ~~WHITE CREEK~~ Windmill Coulee
Source Type: SURFACE WATER

Source Name: Spring, Unnamed Tributary of Ellis Coulee
Source Type: Surface Water

- 3 SESE 11 13N 12E JUDITH BASIN
 *Source Name: SPRING, UNNAMED TRIBUTARY OF ~~WATE CREEK~~ Windmill Coulee
 Period of Diversion: JANUARY 1 TO DECEMBER 31
 Diversion Means: LIVESTOCK DIRECT FROM SOURCE
- 4 NWN 12 13N 12E JUDITH BASIN
 *Source Name: SPRING, UNNAMED TRIBUTARY OF ~~WATE CREEK~~ Ellis Coulee
 Period of Diversion: JANUARY 1 TO DECEMBER 31
 Diversion Means: LIVESTOCK DIRECT FROM SOURCE
- 5 SWNW 12 13N 12E JUDITH BASIN
 *Source Name: SPRING, UNNAMED TRIBUTARY OF ~~WATE CREEK~~ Ellis Coulee
 Period of Diversion: JANUARY 1 TO DECEMBER 31
 Diversion Means: LIVESTOCK DIRECT FROM SOURCE
- 6 NESW 13 13N 12E JUDITH BASIN
 *Source Name: SPRING, UNNAMED TRIBUTARY OF ~~WATE CREEK~~ Ellis Coulee
 Period of Diversion: JANUARY 1 TO DECEMBER 31
 Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 MEANS OF DIVERSION INCLUDES A STOCK TANK.

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(13), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.
3. 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.

CONCLUSIONS OF LAW

1. The DNRC recommendations should be adopted. The means of diversion for claim 41S 131772-00 should be modified to ‘Headgate’ as discussed above.
2. Adoption of the recommendations resolves the substantive issue remarks on the claims and the remarks should be removed.

3. The remaining remarks do not require proceedings to resolve and should be removed from the claims.

RECOMMENDATIONS

1. The claims should be modified as discussed above.
2. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Wertheimer A Inc.
683 Wertheimer Dr.
Hobson, MT 59452

Wertheimer H Inc.
738 Wertheimer Dr.
Hobson, MT 59452-8628

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

Water Right Number: 41S 131754-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: MAY 1, 1952

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 25.00 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: GROUNDWATER

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		NWNESW	30	14N	13E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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		3		30	14N	13E	JUDITH BASIN

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

Water Right Number: 41S 131771-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: JULY 1, 1880

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 200.00

Source Name: JUDITH RIVER

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		SENWNW	29	14N	13E	JUDITH BASIN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

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	100.00		S2	20	14N	13E	JUDITH BASIN
2	80.00		SW	21	14N	13E	JUDITH BASIN
3	20.00		N2NE	29	14N	13E	JUDITH BASIN

Total: 200.00

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

Water Right Number: 41S 131772-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: WERTHEIMER, A INC
 683 WERTHEIMER DR
 HOBSON, MT 59452
 WERTHEIMER, H INC
 738 WERTHEIMER DR
 HOBSON, MT 59452-8628

Priority Date: JULY 1, 1895

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.75 CFS

Volume: 852.14 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 314.82

Source Name: JUDITH RIVER

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		NWNESW	35	14N	12E	JUDITH BASIN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

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	5.19		S2S2NE	35	14N	12E	JUDITH BASIN
2	9.29		N2N2SE	35	14N	12E	JUDITH BASIN
3	54.13		NW	36	14N	12E	JUDITH BASIN
4	29.40		NE	36	14N	12E	JUDITH BASIN
5	64.12		S2NW	29	14N	13E	JUDITH BASIN
6	121.69		E2	31	14N	13E	JUDITH BASIN
7	10.53		E2NW	31	14N	13E	JUDITH BASIN
8	14.48		SESE	30	14N	13E	JUDITH BASIN
9	5.99		SW	29	14N	13E	JUDITH BASIN

Total: 314.82

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.

131772-00

211072-00

211073-00

211074-00

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

Water Right Number: 41S 131773-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: MARCH 1, 1881

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.00 CFS

Volume: 698.70 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 255.00

Source Name: JUDITH RIVER

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		NENENW	36	14N	12E	JUDITH BASIN

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 15

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	30.00		E2SE	25	14N	12E	JUDITH BASIN
2	15.00		E2SE	30	14N	13E	JUDITH BASIN
3	60.00		N2SW	30	14N	13E	JUDITH BASIN
4	50.00		N2NW	29	14N	13E	JUDITH BASIN
5	70.00		SW	20	14N	13E	JUDITH BASIN
6	30.00		SE	20	14N	13E	JUDITH BASIN
Total:	<u>255.00</u>						

Remarks:

STATEMENTS OF CLAIM 41S 104215-00, 41S 104216-00, 41S 131773-00, 41S 211215-00 SHARE A COMMON POINT OF DIVERSION.

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

Water Right Number: 41S 211072-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: MARCH 1, 1882

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 09/04/1984 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 314.82

Source Name: JUDITH RIVER

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		NWNESW	35	14N	12E	JUDITH BASIN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

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	5.19		S2S2NE	35	14N	12E	JUDITH BASIN
2	9.29		N2N2SE	35	14N	12E	JUDITH BASIN
3	54.13		NW	36	14N	12E	JUDITH BASIN
4	29.40		NE	36	14N	12E	JUDITH BASIN
5	64.12		S2NW	29	14N	13E	JUDITH BASIN

6	121.69	E2	31	14N	13E	JUDITH BASIN
7	10.53	E2NW	31	14N	13E	JUDITH BASIN
8	14.48	SESE	30	14N	13E	JUDITH BASIN
9	5.99	SW	29	14N	13E	JUDITH BASIN
Total:	<u>314.82</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.

131772-00 211072-00 211073-00 211074-00

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

Water Right Number: 41S 211073-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: JUNE 1, 1882

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 09/04/1984 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 314.82

Source Name: JUDITH RIVER

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		NWNESW	35	14N	12E	JUDITH BASIN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

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	5.19		S2S2NE	35	14N	12E	JUDITH BASIN
2	9.29		N2N2SE	35	14N	12E	JUDITH BASIN
3	54.13		NW	36	14N	12E	JUDITH BASIN
4	29.40		NE	36	14N	12E	JUDITH BASIN
5	64.12		S2NW	29	14N	13E	JUDITH BASIN

6	121.69	E2	31	14N	13E	JUDITH BASIN
7	10.53	E2NW	31	14N	13E	JUDITH BASIN
8	14.48	SESE	30	14N	13E	JUDITH BASIN
9	5.99	SW	29	14N	13E	JUDITH BASIN
Total:	<u>314.82</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.

131772-00 211072-00 211073-00 211074-00

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

Water Right Number: 41S 211074-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: JUNE 1, 1887

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 09/04/84 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.88 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 314.82

Source Name: JUDITH RIVER

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		NWNE	35	14N	12E	JUDITH BASIN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

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	5.19		S2S2NE	35	14N	12E	JUDITH BASIN
2	9.29		N2N2SE	35	14N	12E	JUDITH BASIN
3	54.13		NW	36	14N	12E	JUDITH BASIN
4	29.40		NE	36	14N	12E	JUDITH BASIN
5	64.12		S2NW	29	14N	13E	JUDITH BASIN

6	121.69	E2	31	14N	13E	JUDITH BASIN
7	10.53	E2NW	31	14N	13E	JUDITH BASIN
8	14.48	SESE	30	14N	13E	JUDITH BASIN
9	5.99	SW	29	14N	13E	JUDITH BASIN
Total:	<u>314.82</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.

131772-00 211072-00 211073-00 211074-00

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

Water Right Number: 41S 30134941 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: JUNE 29, 1895

Type of Historical Right: USE

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 WAITE 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		NESE	6	13N	13E	JUDITH BASIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
2		SWSE	18	13N	13E	JUDITH BASIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
3		NENE	25	13N	12E	JUDITH BASIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
		MEANS OF DIVERSION INCLUDES A STOCK TANK.				

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			NESE	6	13N	13E	JUDITH BASIN
2				6	13N	13E	JUDITH BASIN
3			SWSE	18	13N	13E	JUDITH BASIN

4

NENE 25 13N 12E JUDITH BASIN

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

Water Right Number: 41S 30134942 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: JUNE 29, 1895

Type of Historical Right: USE

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 WINDMILL COULEE

Source Type: SURFACE WATER

***Source Name:** SPRING, UNNAMED TRIBUTARY OF ABBOTT COULEE

Source Type: SURFACE WATER

***Source Name:** SPRING, UNNAMED TRIBUTARY OF JUDITH RIVER

Source Type: SURFACE WATER

Source Name: SPRING, UNNAMED TRIBUTARY OF ELLIS COULEE

Source Type: SURFACE WATER

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

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESE	2	13N	12E	JUDITH BASIN

***Source Name:** SPRING, UNNAMED TRIBUTARY OF ABBOTT COULEE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NESE	9	13N	12E	JUDITH BASIN
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***Source Name:** SPRING, UNNAMED TRIBUTARY OF JUDITH RIVER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		SESE	11	13N	12E	JUDITH BASIN
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Source Name: SPRING, UNNAMED TRIBUTARY OF WINDMILL COULEE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4 NWNE 12 13N 12E JUDITH BASIN

Source Name: SPRING, UNNAMED TRIBUTARY OF ELLIS COULEE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

5 SWNW 12 13N 12E JUDITH BASIN

Source Name: SPRING, UNNAMED TRIBUTARY OF ELLIS COULEE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

6 NESW 13 13N 12E JUDITH BASIN

Source Name: SPRING, UNNAMED TRIBUTARY OF ELLIS COULEE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

MEANS OF DIVERSION INCLUDES A STOCK TANK.

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			SESE	2	13N	12E	JUDITH BASIN
2			NESE	9	13N	12E	JUDITH BASIN
3			SESE	11	13N	12E	JUDITH BASIN
4			NWNE	12	13N	12E	JUDITH BASIN
5			SWNW	12	13N	12E	JUDITH BASIN
6			NESW	13	13N	12E	JUDITH BASIN

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

Water Right Number: 41S 30134945 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: DECEMBER 12, 1906

Type of Historical Right: USE

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 ANTELOPE CREEK, WEST FORK

Source Type: SURFACE WATER

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

Source Type: SURFACE WATER

***Source Name:** SPRING, UNNAMED TRIBUTARY OF WAITE 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		NWNENE	11	12N	12E	JUDITH BASIN

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

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NENENE	13	12N	12E	JUDITH BASIN
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***Source Name:** SPRING, UNNAMED TRIBUTARY OF WAITE CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		SENE	6	12N	13E	JUDITH BASIN
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***Source Name:** SPRING, UNNAMED TRIBUTARY OF ANTELOPE CREEK, WEST FORK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
4 NESWSE 18 12N 13E JUDITH BASIN

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

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
MEANS OF DIVERSION INCLUDES A STOCK TANK.

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			NWNENE	11	12N	12E	JUDITH BASIN
2			NENENE	13	12N	12E	JUDITH BASIN
3			SENE	6	12N	13E	JUDITH BASIN
4			NESWSE	18	12N	13E	JUDITH BASIN

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

Water Right Number: 41S 30134949 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: WERTHEIMER, A INC
683 WERTHEIMER DR
HOBSON, MT 59452

WERTHEIMER, H INC
738 WERTHEIMER DR
HOBSON, MT 59452-8628

Priority Date: MARCH 31, 1894

Type of Historical Right: USE

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: UNNAMED TRIBUTARY OF WAITE 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		E2	1	13N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		E2SE	11	13N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3			12	13N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		W2	13	13N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5			14	13N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

6	NENE	22	13N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
7		23	13N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	W2	24	13N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	NW	6	13N	13E	JUDITH BASIN
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			E2	1	13N	12E	JUDITH BASIN
2			E2SE	11	13N	12E	JUDITH BASIN
3				12	13N	12E	JUDITH BASIN
4			W2	13	13N	12E	JUDITH BASIN
5				14	13N	12E	JUDITH BASIN
6			NENE	22	13N	12E	JUDITH BASIN
7				23	13N	12E	JUDITH BASIN
8			W2	24	13N	12E	JUDITH BASIN
9			NW	6	13N	13E	JUDITH BASIN