Montana Water Court PO Box 1389 Bozeman, MT 59771-1389 1-800-624-3270 (406) 586-4364 watercourt@mt.gov FILED 12/12/2024 Sara Calkins CLERK Montana Water Court STATE OF MONTANA By: <u>D'Ann CIGLER</u> 41S-0538-R-2024 Block, Nathaniel 5.00

IN THE WATER COURT OF THE STATE OF MONTANA LOWER MISSOURI DIVISION JUDITH RIVER BASIN (41S) PRELIMINARY DECREE

CLAIMANTS: Amy A. Hughes; Lance V. Hughes; T Lazy T Ranch Inc.

CASE 41S-0538-R-2024 41S 113216-00 41S 135196-00

OBJECTOR: T Lazy T Ranch Inc.

NOTICE OF INTENT TO APPEAR: State of Montana Department of Fish Wildlife & Parks

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. <u>Please review this report carefully.</u>

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 the following issue remarks:

Claim 41S 113216-00:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 90 MINER'S INCHES DECREED IN CASE NO. 982, FERGUS COUNTY. 41S 113216-00, 41S 135196-00.

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NOS. 30045-179-108 AND 30045-179-110 , DATED 09/17/1979 , APPEAR TO INDICATE 106.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

Claim 41S 135196-00:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 90 MINER'S INCHES DECREED IN CASE NO. 982, FERGUS COUNTY. 41S 113216-00, 41S 135196-00.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

USDA AERIAL PHOTOGRAPH NO(S). 30045-279-15, DATED 09/18/1979, APPEARS TO INDICATE 64.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

POINT OF DIVERSION 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.

THE SUPPLEMENTAL RIGHTS REMARK MAY NOT BE NECESSARY. IT APPEARS THIS CLAIM AND CLAIMS 41S 135190-00, 41S 135194-00, 41S 135197-00, 41S 135199-00 ARE NO LONGER SUPPLEMENTAL.

The claims were consolidated into Case 41S-0538-R-2024 on March 21, 2024 and

on July 24, 2024, a Settlement Agreement ("Agreement") was filed (Doc.¹ 4.00).

Attached to the Agreement were various supporting documents as well as proposed

abstracts and a map depicting the proposed place of use for claim 41S 113216-00.

FINDINGS OF FACT

1. The Agreement proposes modifying claim 41S 113216-00 as follows:

 Flow Rate:
 2.25 CFS
 1.12 CFS

 Maximum Acres:
 134.00
 106.00

^{1 &}quot;Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

Place of Use:							
<u>ID</u>	Acres	Govt Lot	Qtr Sec	Sec	<u>Twp</u>	Rge	<u>County</u>
1	40.00 30.	00	SESE	8	14N	14E	JUDITH BASIN
2	8.00 7.0	0	NESWSE	8	14N	14E	JUDITH BASIN
3	8.00 4.0	00	NWSWSE	8	14N	14E	JUDITH BASIN
4	8.00 5.0		NESESW	8	14N	14E	JUDITH BASIN
5	70.00 60.	00	S2SW	9	14N	14E	JUDITH BASIN
Total:	134.00 106	6.00					

2. The Agreement proposes modifying claim 41S 135196-00 as follows:

Flow Rate: 2.25 CFS 1.12 CFS

3. The 'supplemental rights' remarks on the claims do not require additional further proceedings or information to resolve. The supplemental rights information remarks will be removed from all claims as part of final decree preparation and the supplemental rights issue remarks should be removed.

PRINCIPLES OF LAW

 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.

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.

 "The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court." Rule 17(a),
 W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 411 265 (December 12, 2014).

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CONCLUSION OF LAW

1. The proposed modifications to the flow rate of both claims resolves the decree exceeded and flow rate issue remarks on the claims and the remarks should be removed.

2. The proposed reduction to the maximum acres and place of use for claim 41S 113216-00 as well as the evidence presented resolves the 'acres irrigated' remarks on the claim.

3. The single 'acres irrigated' remark should be removed from claim 41S 135196-00. The photograph is a single snapshot in time, was taken post July 1, 1973 and at the end of the claimed period of use.

RECOMMENDATION

1. Upon review the record in this case, the issue remarks should be removed from the claims. The claims should otherwise be decreed as they appeared in the Preliminary Decree.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

Hertha L. Lund Peter B. Taylor Lund Law PLLC 662 S. Ferguson Ave., Unit 2 Bozeman, MT 59718 lund@lund-law.com taylor@lund-law.com paralegal@lund-law.com

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Note: Service List Updated 12-2-2024

[\]JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41S PD\Cases\538\NB 41S-0538-R-2024 MR - Resolution of IRs 248 (NEW, multiple claims, DE, stip, POU_POD, FR, remove issue remarks) 12-2-2024 rr.docx

POST DECREE ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number:	41S 11321	6-00 ST/	ATEMENT	OFCL	AIM		
	Version:	4 POS	T DECRE	E			
		Status:	ACTIVE				
Owners:	T LAZY T F 4606 ACKL HOBSON, I	EY LAKE I	RD				
Priority Date:	MAY 10, 18	85					
Type of Historical Right:	DECREED						
Purpose (Use):	IRRIGATIO	N					
Irrigation Type:	FLOOD						
Flow Rate:	1.12 CFS						
*Volume:	THE TOTA TO HISTOR					SHALL	NOT EXCEED THE AMOUNT PUT
Climatic Area:	3 - MODER	ATE					
Maximum Acres:	106.00						
Source Name:	JUDITH RI	/ER					
Source Type:	SURF	ACE WATE	ER				
Point of Diversion and Means of Diversion:							
ID	<u>Govt Lo</u>	<u>t</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	County
1			SWSW	8	14N	14E	JUDITH BASIN
Period of Diversion:	APRIL 15 T		ER 31				
Diversion Means:	HEADGATI	Ē					
Period of Use:	APRIL 15 T	О ОСТОВ	ER 31				
Place of Use:							
ID <u>Acre</u>		<u>t</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1 30.0		NI	SESE	8	14N	14E	JUDITH BASIN
2 7.0 3 4.0			ESWSE NSWSE	8 8	14N 14N	14E 14E	JUDITH BASIN JUDITH BASIN
4 5.0			ESESW	8	14N	14E	JUDITH BASIN
5 60.0			S2SW	9	14N	14E	JUDITH BASIN
Total: 106.0							

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.

113211-00 113216-00

POST DECREE ABSTRACT OF WATER RIGHT CLAIM

JUDITH RIVER

BASIN 41S

Water Right Number:	41S 135196	-00 STATEMEI	NT OF CL	AIM		
	Version:	3 POST DECF	REE			
		Status: ACTI	/E			
Owners:	AMY A HUGHES PO BOX 309 HOBSON, MT 59452-0309					
	LANCE V HU PO BOX 309 HOBSON, M					
Priority Date:	MAY 10, 188	5				
Type of Historical Right:	DECREED					
Purpose (Use):	IRRIGATION	I				
Irrigation Type:	FLOOD					
Flow Rate:	1.12 CFS					
*Volume:		VOLUME OF TH CAL AND BENE			T SHALL	NOT EXCEED THE AMOUNT PUT
Climatic Area:	3 - MODERA	TE				
Maximum Acres:	300.00					
Source Name:	JUDITH RIV	ER				
Source Type:	SURFA	CE WATER				
*Point of Diversion and Means	of Diversion:					
<u>ID</u> 1	<u>Govt Lot</u>	<u>Qtr Sec</u> NWSWSW		<u>Twp</u> 14N	<u>Rge</u> 14E	<u>County</u> JUDITH BASIN
Period of Diversion:	APRIL 1 TO	OCTOBER 1				
Diversion Means:	HEADGATE					
Period of Use:	APRIL 1 TO	OCTOBER 1				
Place of Use:						
ID Acres 1 150.00 2 150.00))	<u>Otr Sec</u> S2N2 N2S2	35	<u>Twp</u> 15N 15N	<u>Rge</u> 14E 14E	<u>County</u> JUDITH BASIN JUDITH BASIN
Total: 300.00						

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.

135190-00 135194-00 135196-00 135197-00 135	5199-00
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