

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

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

CLAIMANT: B & K Livestock, LLC; Amy A. Hughes;
Lance V. Hughes

CASE 41S-0643-R-2024

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

41S 14607-00 41S 14667-00
41S 14609-00 41S 16514-00
41S 14660-00 41S 16515-00
41S 14661-00 41S 16517-00
41S 14666-00 41S 16520-00

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. B&K Livestock, LLC (“B&K”) is the record owner of claims 41S 14607-00, 41S 14609-00, 41S 14660-00, 41S 14661-00, 41S 14666-00, 41S 14667-00, 41S 16514-00, and 41S 16520-00; B&K, Amy A. Hughes, and Lance V. Hughes (together, “Claimants”) are the record co-owners of claims 41S 16515-00 and 41S 16517-00.

2. Montana Fish Wildlife & Parks filed (DFWP) Notices of Intent to Appear for claims 41S 14666-00, 41S 14667-00, 41S 16514-00, 41S 16515-00, 41S 16517-00, and 41S 16520-00.

3. The following issue remarks decreed on the claims were not addressed through the objection process:

Claims 41S 14607-00 and 41S 14609-00:

- THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 41S 14607-00, 41S 14609-00 .
- THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41S 14607-00, 41S 14609-00, 41S 14660-00, 41S 14661-00 .

Claims 41S 14660-00 and 41S 14661-00:

- THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 41S 14660-00, 41S 14661-00 .
- THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41S 14660-00, 41S 14661-00, 41S 14609-00, 41S 14607-00 .

Claim 41S 14666-00:

- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-171 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION REPORT FILED ON 11/24/1998 STATES THAT IT APPEARS THE TOWNSHIP FOR THE PLACE OF USE PARCEL IN SECTION 1 SHOULD BE 15N RATHER THAN 16N.

Claim 41S 14667-00:

- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-171 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Claims 41S 16514-00 and 41S 16515-00:

- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-171 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Claims 41S 16517-00 and 41S 16520-00:

- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-171 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSESE SEC 31 TWP 15N RGE 15E JUDITH BASIN COUNTY.

B&K¹ was ordered to meet with a DNRC employee to address the unresolved issue remarks. On May 14, 2024, DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating she was not contacted by B&K Livestock and making recommendations for the claims in the Case. (Doc. 2.00).

4. An Order was issued on May 28, 2024, set a deadline for Claimant B&K Livestock, LLC to agree or disagree with the following modifications recommended by Ms. Bluhm for claims 41S 14607-00, 41S 14609-00, 41S 14660-00, 41S 14661-00, 41S 14666-00, 41S 14667-00, 41S 16514-00, and 41S 16520-00:

- **Claims 41S 14607-00, 41S 14609-00, 41S 14660-00, and 41S 14661-00:**
 - Claims 41S 14609-00 and 41S 14661-00 should be dismissed.
 - Multiple use remarks should be placed on claims 41S 14607-00 and 41S 14660-00.
- **Claim 41S 14666-00:**
 - Claim 41S 14666-00 should be dismissed.
- **Claim 41S 14667-00:**
 - The flow rate and point of diversion should be modified:

Flow Rate: 3.33 CFS 3.34 CFS

Point of Diversion and Means of Diversion:

ID	Court List	Qtr	Sec	Twp	Rge	County
1	NESENEW	SW	SW	11	15N	15E JUDITH BASIN
Period of Diversion:		MAY 1 TO SEPTEMBER 30				
Diversion Means:		HEADGATE				

- **Claim 41S 16514-00:**
 - Claim 41S 16514-00 should be dismissed.
- **Claim 41S 16520-00:**
 - Claim 41S 16520-00 should be dismissed.

¹ Upon review of the April 8, 2024 Order, this Water Master became aware that she failed to *specifically* include Amy A. Hughes and Lance V. Hughes as claimants who were required to meet with the DNRC. The Hughes' did receive a copy of the Order. A deadline for the Hughes' was set in the May 28, 2024 Order.

The Order set a deadline for Claimants B&K Livestock, LLC, Amy A. Hughes, and Lance V. Hughes to agree or disagree that claims 41S 16515-00 and 41S 16517-00 should be dismissed. The Order indicated that if nothing were filed by the June 28, 2024 deadline, this Water Master would conclude the Claimants agreed with Ms. Bluhm's recommendations.

5. On July 12, 2024, Claimants Amy A. Hughes and Lance V. Hughes withdrew their interest in claims 41S 16515-00 and 41S 16517-00. Nothing else was filed by the July 28, 2024 deadline.

On July 3, 2024, prior to filing the withdrawal of interest, counsel for the Hughes' filed a Notice of Appearance. (Doc. 8.00). Due to oversight, the service list was not updated and the September 13, 2024 Order on Status of Case and Order Extending Deadline for B&K Livestock, LLC and DFWP was not served on counsel for the Hughes. Attorneys Peter B. Taylor and Hertha Lund are added to the Service List in this Master's Report and this is the last order the Hughes' will receive.

6. A deadline was also set for DFWP to file a statement indicating whether the Notices of Intent to Appear would be resolved if claims 41S 14666-00, 41S 16514-00, 41S 16515-00, 41S 16517-00, and 41S 16520-00 are dismissed, and the flow rate and point of diversion are modified for claim 41S 14667-00. On June 20, 2024, DFWP filed its Statement to Water Master Regarding Ms. Bluhm's May 14, 2024 Memorandum of Filing along with the Declaration of Andrew Brummond. (Docs. 4.00 and 5.00). DFWP's June 20, 2024 Filings indicated agreement with Ms. Bluhm's analysis regarding claims 41S 14666-00, 41S 16514-00, 41S 16515-00, 41S 16517-00, and 41S 16520-00. However, DFWP indicated it disagreed with Ms. Bluhm's recommendations regarding claim 41S 14667-00.

7. On November 8, 2024, DFWP filed a Status Report and attached a Request to Withdraw Statement of Claim for claim 41S 14667-00, signed by owner of B&K Livestock, LLC, Bryan Vincent. (Doc. 14.00).

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim.
Section 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.

RECOMMENDATIONS

1. A multiple-use remark should be placed on claims 41S 14607-00 and 41S 14660-00.
2. The following claims should be dismissed: 41S 14609-00, 41S 14661-00, 41S 14666-00, 41S 14667-00, 41S 16514-00, 41S 16515-00, 41S 16517-00, and 41S 16520-00.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Alexander R. Scolavino III
Montana Department of Fish Wildlife & Parks
PO Box 200701
Helena, MT 59620
(406) 444-3308
Alexander.scolavino@mt.gov
~~ebell@mt.gov~~
Audrey.Kelly@Mt.gov

Lund Law PLLC
Hertha L. Lund
Peter Taylor
662 S. Ferguson Ave., Unit 2
Bozeman, MT 59718
(406) 586-6254
lund@lund-law.com
taylor@lund-law.com
paralegal@lund-law.com

Service via USPS Mail:

B & K Livestock, LLC
6647 N Kolin Rd.
Moccasin, MT 59462

Amy A. Hughes
Lance V. Hughes
PO Box 309
Hobson, MT 59452
(Last Order)

Service List Updated: 11/20/2024

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

Water Right Number: 41S 14607-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date: JUNE 1, 1927

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		SENE	11	15N	15E	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			SENE	11	15N	15E	JUDITH BASIN

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.

14607-00 14660-00

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

Water Right Number: 41S 14609-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 14660-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date: JUNE 1, 1927

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 2.50 AC-FT

Households: 2

Maximum Acres: 0.25

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		SENE	11	15N	15E	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	0.25		SENE	11	15N	15E	JUDITH BASIN

Total: 0.25

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.

14607-00 14660-00

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

Water Right Number: 41S 14661-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 14666-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 14667-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 16514-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 16515-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: DISMISSED

Owners: AMY A HUGHES
PO BOX 309
HOBSON, MT 59452-0309

LANCE V HUGHES
PO BOX 309
HOBSON, MT 59452-0309

B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 16517-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners:

AMY A HUGHES
PO BOX 309
HOBSON, MT 59452-0309

LANCE V HUGHES
PO BOX 309
HOBSON, MT 59452-0309

B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41S 16520-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: B & K LIVESTOCK LLC
6647 N KOLIN RD
MOCCASIN, MT 59462-9560

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: JUDITH RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.