

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

CLAIMANT: Richard A. Clary

CASE 41S-0767-R-2024

41S 6811-00

41S 9501-00

41S 10517-00

41S 10525-00

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. Richard A. Clary is the record owner of claims 41S 6811-00, 41S 9501-00, 41S 10517-00, and 41S 10525-00.

2. Claims 41S 6811-00, 41S 9501-00, 41S 10517-00, and 41S 10525-00 were decreed with DNRC issue remarks:

Claim 41S 6811-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-102 , DATED 09/17/1979 , APPEARS TO INDICATE 27.50 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA..

Claim 41S 9501-00:

- 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.

Claim 41S 10517-00:

- THE PRIORITY DATE MAY BE QUESTIONABLE. IT APPEARS THE FORM GW4, DECLARATION OF VESTED GROUNDWATER RIGHTS, FILED 12/27/1963 WAS USED IN LIEU OF A FORM GW2 , NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION.

Claim 41S 10525-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY(1963)APPEARS TO INDICATE 1.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-104 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. Claimant Richard A. Clary was ordered to meet with a DNRC employee to address the unresolved issue remarks. (Doc.¹1.00).

4. DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum on October 16, 2024. (Doc.² 3.00). Mr. Ahlgren stated that he was not contacted by the Claimant. Mr. Ahlgren indicated that he reviewed the Judith Basin County Water Resource Survey and aerial photos to prepare the Memorandum.

5. **41S 6811-00:** Mr. Ahlgren reported he could substantiate 27.50 acres as irrigated on an aerial photograph; he also stated that “DNRC can confidently identify the

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

historic point of diversion. The point of diversion was decreed as SESENW Sec. 8, T14N, R12E. The DNRC located the historic diversion at NENESW Sec. 8, T14N, R12E.”

Based on the information provided by Mr. Ahlgren, it appears the following modifications should be made to claim 41S 6811-00 to resolve the DNRC issue remarks:

Flow Rate: 1.04 1.44 CFS
 Maximum Acres: 27.50 38.00

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	NENESW	SESENW	8	14N	12E	JUDITH BASIN

Period of Diversion: MAY 20 TO SEPTEMBER 15
 Diversion Means: HEADGATE

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	27.50 38.00		S2NE	8	14N	12E	JUDITH BASIN
Total:	38.00	27.50					

6. **41S 9501-00:** Mr. Ahlgren confirmed the point of diversion at the claimed location and recommended the issue remark be removed with no changes to the elements of the claim.

7. **41S 10517-00:** No changes are required.

8. **41S 10525-00:** Mr. Ahlgren confirmed 1.00 acre of irrigation at the claimed place of use. Additionally, Mr. Ahlgren confirmed the location of the headgate at the claimed location. Based on the information provided by Mr. Ahlgren, it appears the following modifications should be made to claim 41S 10525-00 to resolve the DNRC issue remarks:

Flow Rate: 17.00 246.84 GPM
 Maximum Acres: 1.00 14.60

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	1.00 14.60		S2NWNW	14	14N	12E	JUDITH BASIN
Total:	14.60	1.00					

9. An Order was issued to determine if Claimant Richard A. Clary agreed or disagreed with the recommendations made by Mr. Ahlgren. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimant agreed with the recommended modifications. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed.

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.
3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. Claim 41S 6811-00 should be modified as follows:

Flow Rate:	1.04	4.44 CFS					
Maximum Acres:	27.50	38.00					
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	NENESW	SESENW	8	14N	12E	JUDITH BASIN	
Period of Diversion:	MAY 20 TO SEPTEMBER 15						
Diversion Means:	HEADGATE						
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	27.50	38.00	S2NE	8	14N	12E	JUDITH BASIN
Total:	38.00	27.50					

Claim 41S 10525-00 should be modified as follows:

Flow Rate: 17.00 248.84 GPM

Maximum Acres: 1.00 44.60

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	1.00 44.60		S2NWNW	14	14N	12E	JUDITH BASIN
Total:	44.60 1.00						

2. The issue remarks should be removed from claims 41S 6811-00, 41S 9501-00, 41S 10517-00, and 41S 10525-00.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Richard A. Clary
500 Courtneys Creek Rd
Stanford, MT 59479

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

Water Right Number: 41S 6811-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: RICHARD A CLARY
500 COURTNEYS CREEK RD
STANFORD, MT 59479

Priority Date: SEPTEMBER 25, 1894

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.04 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: 27.50

Source Name: UNNAMED TRIBUTARY OF SAGE 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		NENESW	8	14N	12E	JUDITH BASIN

Period of Diversion: MAY 20 TO SEPTEMBER 15

Diversion Means: HEADGATE

Period of Use: MAY 20 TO SEPTEMBER 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	27.50		S2NE	8	14N	12E	JUDITH BASIN
Total:	27.50						

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

Water Right Number: 41S 9501-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: RICHARD A CLARY
500 COURTNEYS CREEK RD
STANFORD, MT 59479

Priority Date: JULY 9, 1947

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 390.46 GPM

***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: 23.00

Source Name: COURTNEYS 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		SWNENW	14	14N	12E	JUDITH BASIN
Period of Diversion: MAY 20 TO SEPTEMBER 20						
Diversion Means: HEADGATE						
2		SESENE	15	14N	12E	JUDITH BASIN
Period of Diversion: MAY 20 TO SEPTEMBER 20						
Diversion Means: HEADGATE						

Period of Use: MAY 20 TO SEPTEMBER 20

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	23.00		E2NW	14	14N	12E	JUDITH BASIN
Total:	23.00						

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

Water Right Number: 41S 10517-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RICHARD A CLARY
 500 COURTNEYS CREEK RD
 STANFORD, MT 59479

Priority Date: FEBRUARY 28, 1962

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 40.00 GPM

Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

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		SWSWNW	14	14N	12E	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	1.00		SWSWNW	14	14N	12E	JUDITH BASIN

Total: 1.00

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.

10517-00

10538-00

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

Water Right Number: 41S 10525-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: RICHARD A CLARY
500 COURTNEYS CREEK RD
STANFORD, MT 59479

Priority Date: JULY 2, 1947

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 17.00 GPM

***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: 1.00

Source Name: COURTNEYS 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		SESENE	15	14N	12E	JUDITH BASIN

Period of Diversion: MAY 1 TO JUNE 30

Diversion Means: HEADGATE

Period of Use: MAY 1 TO JUNE 30

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	1.00		S2NWNW	14	14N	12E	JUDITH BASIN
Total:	<u>1.00</u>						