

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: Heather Dye; James A. Dye;
Melanie K. Myllymaki

CASE 41S-0824-R-2024
41S 13401-00
41S 131739-00
41S 211083-00
41S 211084-00

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. Melanie K. Myllymaki is the record owner of claims 41S 13401-00, 41S 211083-00, and 41S 211084-00; Heather Dye is a contract for deed purchaser of claims 41S 13401-00, 41S 131739-00, 41S 211083-00, and 41S 211084-00; James A. Dye is a contract for deed purchaser of claim 41S 131739-00, 41S 211083-00, and 41S 211084-00.¹

2. Claims 41S 13401-00, 41S 131739-00, 41S 211083-00, and 41S 211084-00 were decreed with DNRC issue remarks:

41S 13401-00:

- ADDITIONAL PROCEEDING ON THE GERALD W. CLARK OBJECTION TO ACRES IRRIGATED AND PLACE OF USE ARE STAYED PENDING ISSUANCE OF THE PRELIMINARY DECREE AT WHICH TIME THE OBJECTION AND THE ISSUE REMARKS CONCERNING THESE SAME ELEMENTS CAN BE ADDRESSED AND RESOLVED.
- ON 04/09/1985 JOYCE M. CLARK AND GERALD W. CLARK FILED AN AFFIDAVIT WHICH SPECIFIES INCREASING THE FLOW RATE TO 12.50 CFS (500.00 MINER'S INCHES). THIS IS DEEMED AND DOCKETED AS A LATE OBJECTION AND WILL BE ADDRESSED AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.
- 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). 30045-179-163, DATED 09/17/1979, APPEARS TO INDICATE 15.50 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

41S 131749-00:

- 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). 30045-179-163, DATED 09/17/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

41S 211083-00:

- 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.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.
- CLAIM FILED LATE 09/13/1984. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN

¹ If the contract for deed has been satisfied, the parties may contact the DNRC to update ownership.

AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

41S 211084-0:

- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-163, DATED 09/17/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S TEMPORARY PRELIMINARY DECREE ISSUED 05/17/1984.
- CLAIM FILED LATE 09/13/1984. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

Late Objection:

3. On April 9, 1985, Joyce M. Clark and GW Clark filed a joint affidavit reiterating the elements of claim 41S 13401-00, as it was decreed in the Temporary Preliminary Decree, except for a modification to the legal land description of one parcel and increasing the flow rate from .76 cubic feet per second (cfs) to 12.40 cfs. Flow rate was not included on the Temporary Preliminary Decree objection list, and a Master's Report was issued explaining the request to increase flow rate would be taken as a late objection and addressed in the next decree, issue remarks were added to claim 41S 13401-00.

On May 13, 2024, an Order was issued setting a deadline for Joyce M. Clark and Gerald W. Clark to indicate whether they would pursue the 1985 late Objection to claim 41S 13401-00. (Doc.² 1.00). The Order indicated that if nothing were filed by the June 28, 2024 deadline, it would be determined that Joyce M. Clark and Gerald W. Clark did not intend to pursue the late Objection and dismissal of the late Objection would be recommended in the forthcoming Master's Report. Nothing was filed.

²“Doc.” numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

Issue Remarks:

4. The Claimants were ordered to meet with a DNRC employee to address the unresolved issue remarks decreed on claims 41S 13401-00, 41S 131739-00, and 41S 211083-00. (Doc. 2.00). Another Order was issued requesting the unresolved issue remarks decreed on claim 41S 211084-00 be addressed. (Doc. 4.00).

5. On August 22, 2024, DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum addressing claims 41S 13401-00, 41S 131739-00, and 41S 211083-00; it stated none of the Claimants contacted the DNRC. (Doc. 3.00). Mr. Ahlgren indicated he reviewed scanned claim files to write the Memorandum. On September 22, 2024, Mr. Ahlgren filed a Memorandum regarding claim 41S 211084-00 stating he was contacted by Heather Dye. (Doc. 5.00).

6. **41S 13401-00:** Mr. Ahlgren stated that he was “unable to substantiate any more acreage than the 15.50 identified during examination” and recommended the following modifications to claim 41S 13401-00:

Flow Rate:	263.50	341.00	GPM				
Maximum Acres:	15.50	22.00					
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	12.50	48.00	NESE	5	15N	13E	JUDITH BASIN
2	3.00	2.00	SESENE	5	15N	13E	JUDITH BASIN
3		2.00	SENESE	6	16N	13E	JUDITH BASIN
Total:	22.00	15.50					

7. **41S 131739-00:** Mr. Ahlgren stated he was unable to confirm historical irrigation for claim 41S 131739-00 and recommended the claim be dismissed.

8. **41S 211083-00:** Mr. Ahlgren stated he was unable to confirm historical irrigation for claim 41S 211083-00 and recommended the claim be dismissed.

9. **41S 211084-00:** Claimant Heather Dye told Mr. Ahlgren, “that although the original claimants were planning on irrigating when this claim was filed, irrigation in the claimed place of use had never occurred.” Mr. Ahgren recommended claim 41S 211084-00 be dismissed.

10. An Order was issued to determine if the Claimants agreed or disagreed with the recommendations made by Mr. Ahlgren. (Doc. 7.00). The Order indicated that if

nothing were filed by the deadline, this Water Master would conclude the Claimants agreed with the recommended modifications and dismissals. 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.

11. On October 18, 2024, a copy of the September 27, 2024 Order was filed, signed by Melanie K. Myllymaki. The filing is being taken as agreement with proposed modifications and dismissals.

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. Claim 41S 13401-00 should be modified as follows:

Flow Rate:	263.50	341.00	GPM				
Maximum Acres:	15.50	22.00					
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	12.50	18.00	NESE	5	15N	13E	JUDITH BASIN
2	3.00	2.00	SESENE	5	15N	13E	JUDITH BASIN
3		2.00	SENESE	6	16N	13E	JUDITH BASIN
Total:	22.00	15.50					

Claims 41S 131739-00, 41S 211083-00, and 41S 211084-00 should be dismissed.

2. The issue remarks should be removed from claim 13401-00
Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Heather Dye
James A. Dye
1825 Windham Benchland Rd
Stanford, MT 59479

Melanie K. Myllymaki
335 Last Chance Rd
Stanford, MT 59479

Gerald W. Clark
Joyce M. Clark
HC 62 Box 3070
Stanford, MT 59479
(Late Objectors)

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

Water Right Number: 41S 13401-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: MELANIE K MYLLYMAKI
335 LAST CHANCE RD
STANFORD, MT 59479-9525

Priority Date: JUNE 1, 1891

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 263.50 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: 15.50

Source Name: 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		SENESE	5	15N	13E	JUDITH BASIN

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: MAY 1 TO OCTOBER 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	12.50		NESE	5	15N	13E	JUDITH BASIN
2	3.00		SESENE	5	15N	13E	JUDITH BASIN

Total: 15.50

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.

13401-00 13402-00 211083-00

AUTHORIZATION TO CHANGE 41S 13401-00 SHOULD BE TERMINATED IF COURTS AGREE TO ADD THE ADDITIONAL TWO ACRES. SEE CHANGE FILE FOR MORE INFORMATION. FILE REFLECTS AUTHORIZATION TO CHANGE PLACE OF USE ON A PORTION COMPLETED 05/13/1985.

Contract for Deed Purchasers: HEATHER DYE
1825 WINDHAM BENCHLAND RD
STANFORD, MT 59479-9524

JAMES A DYE
1825 WINDHAM BENCHLAND RD
STANFORD, MT 59479-9524

THIS WATER RIGHT IS APPURTENANT TO REAL PROPERTY THAT IS THE SUBJECT OF A CONTRACT FOR DEED. THE CONTRACT FOR DEED PURCHASER IS ENTITLED TO THE SAME NOTICE AS THE OWNER OF THE PROPERTY PURSUANT TO 85-2-232(1)(C) AND 70-20-115, MCA. REFERENCE TO THE CONTRACT FOR DEED PURCHASERS IN THIS ABSTRACT IS FOR NOTICE PURPOSES ONLY AND DOES NOT AMOUNT TO A STATEMENT REGARDING OWNERSHIP. UPON TRANSFER OF THE PROPERTY IDENTIFIED AS THE PLACE OF USE FOR THIS WATER RIGHT, THE TRANSFEREE IS RESPONSIBLE FOR UPDATING OWNERSHIP AS REQUIRED BY 85-2-423 AND -424, MCA. IN THE EVENT OF A DEFAULT RESULTING IN TERMINATION OF THE CONTRACT FOR DEED AND RELEASE OF DOCUMENTS FROM ESCROW, THE OWNERS SHALL PROVIDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH A COPY OF A QUIT CLAIM DEED OR SIMILAR INSTRUMENT INDICATING THE CONTRACT FOR DEED PURCHASERS ARE NO LONGER ENTITLED TO RECEIVE NOTICE OF PROCEEDINGS INVOLVING THIS WATER RIGHT.

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

Water Right Number: 41S 131739-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: JAMES A DYE
1825 WINDHAM BENCHLAND RD
STANFORD, MT 59479-9524

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SAGE CREEK

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 211083-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Late Claim: B

Owners:

MELANIE K MYLLYMAKI

335 LAST CHANCE RD

STANFORD, MT 59479-9525

OWNER MELANIE K MYLLYMAKI RETAINED. CONTRACT FOR DEED INTEREST.

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SAGE CREEK

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 211084-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Late Claim: B

Owners:

MELANIE K MYLLYMAKI

335 LAST CHANCE RD

STANFORD, MT 59479-9525

OWNER MELANIE K MYLLYMAKI RETAINED. CONTRACT FOR DEED INTEREST.

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SAGE CREEK

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.