

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: Amy A. Hughes; Lance V. Hughes; Karen L.
Thomas Living Trust Dated 01-11-2006;
Thomas W. Watson

CASE 41S-0314-R-2024

41S 135189-00
41S 135192-00
41S 135195-00
41S 30131197

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 41K-0314-R-2023 on March 8, 2024, and the claimants were ordered to work with the Department of Natural Resources and Conservation to resolve the issue remarks on the claims. On May 31, 2024, a Memorandum ("Memo") was filed (Doc.¹ 3.00).

FINDINGS OF FACT

1. Claim 41S 135189-00 was decreed with the following issue remarks:

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

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 30.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

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

USDA AERIAL PHOTOGRAPH NO(S). 30045-279-15 , DATED 09/18/1979 , APPEARS TO INDICATE 9.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

2. The Memo recommends reducing the maximum acres to 9 acres which would resolve the two 'irrigated acreage' issue remarks. A map of the recommended 9 acre place of use is attached to the Memo. The Memo additionally recommended reducing the flow rate to 153 GPM which would resolve the flow rate issue remark. The remaining issue remark does not require additional proceedings and should be considered resolved.

3. Claim 41S 135192-00 was decreed with the following issue remarks:

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 122.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30045-179-110 , DATED 09/17/1979 , APPEARS TO INDICATE 55.00 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.

4. The Memo recommends the removal of the three issue remarks.
5. Claim 41S 135195-00 was decreed with the following issue remarks:

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

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

USDA AERIAL PHOTOGRAPH NO(S). 30045-179-110 , DATED 09/17/1979 , APPEARS TO INDICATE 49.00 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.

6. The Memo recommends the removal of the issue remarks.

7. Claim 41S 30131197 was decreed with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

THIS CLAIM APPEARS TO DIVERT WATER FROM TWO SEPARATE SOURCES. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

8. Claim 41S 30131197 is a livestock direct from source right. The Memo states that the claim claimed two unnamed tributaries of the Judith River. The Memo recommended that the following remark be added to the claim:

S15- Source includes unnamed tributaries of Judith River.

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.

CONCLUSION OF LAW

1. The DNRC recommendations should be adopted.

RECOMMENDATION

1. Upon review of the record in this case, the above-captioned claims should be modified as discussed above. 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:

Amy A. Hughes
Lance V. Hughes
PO Box 309
Hobson, MT 59452-0309

Karen L. Thomas Living Trust Dated 01-11-2006
% Trustees
243 Springdale Lane
Hobson, MT 59452

Thomas W. Watson
2172 N. River Road
Hobson, MT 59452

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

Water Right Number: 41S 135189-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

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

Priority Date: JULY 15, 1882

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 153.00 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: 9.00

Source Name: SPRING, UNNAMED TRIBUTARY OF SPRING CREEK

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		NWNW	36	15N	14E	JUDITH BASIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 1

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	9.00		N2NW	36	15N	14E	JUDITH BASIN

Total: 9.00

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

Water Right Number: 41S 135192-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

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

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

THOMAS W WATSON
2172 N RIVER RD
HOBSON, MT 59452

THOMAS, KAREN L LIVING TRUST DATED 01-11-2006
% TRUSTEES
243 SPRINGDALE LN
HOBSON, MT 59452

Priority Date: MAY 1, 1893

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.75 CFS

Volume: 352.80 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 147.00

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		SESESE	3	14N	14E	JUDITH BASIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 1

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	20.00		N2NWSE	2	14N	14E	JUDITH BASIN
2	35.00		S2NE	2	14N	14E	JUDITH BASIN
3	40.00		NENE	2	14N	14E	JUDITH BASIN

4	12.00	SWNW	1	14N	14E	JUDITH BASIN
5	40.00	NWNW	1	14N	14E	JUDITH BASIN
Total:	<u>147.00</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.

135192-00

135195-00

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

Water Right Number: 41S 135195-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

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

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

THOMAS W WATSON
2172 N RIVER RD
HOBSON, MT 59452

THOMAS, KAREN L LIVING TRUST DATED 01-11-2006
% TRUSTEES
243 SPRINGDALE LN
HOBSON, MT 59452

Priority Date: MAY 24, 1882

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.57 CFS

Volume: 352.80 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 147.00

Source Name: SPRING, UNNAMED TRIBUTARY OF JUDITH RIVER

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		SENWNW	10	14N	14E	JUDITH BASIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 1

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	20.00		N2NWSE	2	14N	14E	JUDITH BASIN
2	35.00		S2NE	2	14N	14E	JUDITH BASIN
3	40.00		NENE	2	14N	14E	JUDITH BASIN

4	12.00	SWNW	1	14N	14E	JUDITH BASIN
5	40.00	NWNW	1	14N	14E	JUDITH BASIN
Total:	<u>147.00</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.

135192-00

135195-00

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

Water Right Number: 41S 30131197 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

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

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

***Priority Date:** DECEMBER 31, 1883

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 JUDITH RIVER

Source Type: SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF JUDITH RIVER.

***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		NWSENE	35	15N	14E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S2NW	35	15N	14E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		N2SE	35	15N	14E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NESENE SW	35	15N	14E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SESENE SW	35	15N	14E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 6 N2N2NW 36 15N 14E JUDITH BASIN
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 7 SENENW 36 15N 14E JUDITH BASIN
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 8 S2NW 36 15N 14E JUDITH BASIN
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 9 NWNWSW 36 15N 14E 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			NWSENE	35	15N	14E	JUDITH BASIN
2			S2NW	35	15N	14E	JUDITH BASIN
3			N2SE	35	15N	14E	JUDITH BASIN
4			NESENE SW	35	15N	14E	JUDITH BASIN
5			SESENE SW	35	15N	14E	JUDITH BASIN
6			N2N2NW	36	15N	14E	JUDITH BASIN
7			SENENW	36	15N	14E	JUDITH BASIN
8			S2NW	36	15N	14E	JUDITH BASIN
9			NWNWSW	36	15N	14E	JUDITH BASIN