

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

FILED
07/30/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0322-R-2024
Block, Nathaniel
3.00

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

CLAIMANT: Hughes Livestock Co.

CASE 41S-0322-R-2024

41S 121198-00
41S 121202-00
41S 121204-00
41S 121205-00

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

The above-captioned claims appeared in the Preliminary Decree for the Judith River (Basin 41S) with issue remarks.

The claims were consolidated into Case 41S-0322-R-2024 on March 13, 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 June 12, 2024, a Memorandum ("Memo") was filed (Doc.¹ 2.00). Maps showing the points of diversion and places of use for the claims were attached to the Memo.

FINDINGS OF FACT

1. Claim 41S 121198-00 was decreed with the following issue remarks:

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). 30045-179-134 AND 30045-179-159 , 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.

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

2. The Memo recommends reducing the maximum acreage to 11.59 acres and the flow rate to 197.03 GPM. The Memo stated that modifying the claim thusly would resolve the 'acres irrigated' issue remarks and flow rate issue remark. The Memo further recommended the removal of the point of diversion and 'combined acres' issue remarks.

3. Claim 41S 121202-00 was decreed with the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. ON 06/22/2000 HUGHES LIVESTOCK COMPANY FILED AN AFFIDAVIT REQUESTING THAT THE MAXIMUM ACRES AND PLACE OF USE BE INCREASED TO THE 23.00 ACRES IDENTIFIED ON THE 1979 AERIAL PHOTOGRAPH. THIS IS DEEMED A LATE OBJECTION AND WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 35.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30045-179-159 AND 30045-179-161 , DATED 09/17/1979 , APPEARS TO INDICATE 23.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

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

4. The Memo recommends modifying the maximum acres to 23.0 acres. The Memo stated that adoption of the modification would resolve the ‘maximum acres’ and flow rate issue remarks.

5. Claim 41S 121204-00 was decreed with the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. ON 06/22/2000 HUGHES LIVESTOCK COMPANY FILED AN AFFIDAVIT STATING THAT THERE ARE TWO DITCHES USED FOR THIS RIGHT. THIS IS DEEMED A LATE OBJECTION TO THE POINT OF DIVERSION AND MEANS OF DIVERSION AND WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

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

USDA AERIAL PHOTOGRAPH NO(S). 30045-179-134 AND 30045-179-136 , 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.

6. The Memo recommends modifying the maximum acres to 14.56 acres. The Memo further recommended the modification of the point of diversion as follows:

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	SWNESE	NWNWSE	13	15N	11E	JUDITH BASIN
Period of Diversion: MARCH 1 TO NOVEMBER 1						
Diversion Means: HEADGATE						
Period of Use: MARCH 1 TO NOVEMBER 1						

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
2	4	SENWSW	18	15N	12E	Judith Basin
Period of Diversion: March 1 to November 1						
Diversion Means: Headgate						
Period of Use: March 1 to November 1						

7. The Memo stated that adoption of these modifications would resolve the ‘maximum acres’, flow rate, and point of diversion issue remarks.

8. Claim 41S 121205-00 was decreed with the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 21.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30045-179-134 AND 30045-179-136 , 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 NWSWSE OR THE NESWSE SEC 24 TWP 15N RGE 11E JUDITH BASIN COUNTY.

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

9. The Memo recommends modifying the maximum acres to 22.23 acres and the flow rate to 377.91 GPM. The Memo states that adoption of the recommendations would resolve the ‘acres irrigated’, flow rate and ‘combined acres’ issue remarks. The Memo further recommends removal of the point of diversion issue remark.

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.

RECOMMENDATIONS

1. Claim 41S 121198-00 should be modified as follows:

Flow Rate: ~~201.96 GPM~~ **197.03 GPM**

Maximum Acres: ~~12.00~~ **11.59**

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	2.00 1.45		E2SE	18	15N	12E	JUDITH BASIN
2	10.00 10.14		NE	18	15N	12E	JUDITH BASIN
Total:	12.00 11.59						

2. Claim 41S 121202-00 should be modified as follows:

Maximum Acres: ~~20.00~~ 23.00

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	5.00 6.00		SE	8	15N	12E	JUDITH BASIN
2	15.00 17.00		W2NW	9	15N	12E	JUDITH BASIN
Total:	20.00 23.00						

3. Claim 41S 121204-00 should be modified as follows:

Maximum Acres: ~~20.00~~ 14.56

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	SWNESE	NWNWSE	13	15N	11E	JUDITH BASIN

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO NOVEMBER 1

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
2	4	SENWSW	18	15N	12E	Judith Basin

Period of Diversion: March 1 to November 1

Diversion Means: Headgate

Period of Use: March 1 to November 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	5.00 4.50		NESE	13	15N	11E	JUDITH BASIN
2	10.00 5.45		NWSW	18	15N	12E	JUDITH BASIN
3	5.00 4.61		NESW	18	15N	12E	JUDITH BASIN
Total:	20.00 14.56						

4. Claim 41S 121205-00 should be modified as follows:

Flow Rate: ~~1.25 CFS~~ **377.91 GPM**

Maximum Acres: ~~33.00~~ **22.23**

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	25.00 18.46		NESE	24	15N	11E	JUDITH BASIN
2	3.00 1.22		SESENE	24	15N	12E	JUDITH BASIN
3	2.00 0.58		SWSWNW	19	15N	12E	JUDITH BASIN
4	3.00 1.97		NWNWSW	19	15N	12E	JUDITH BASIN
Total:	33.00 22.23						

5. Adoption of the recommendations resolves the issue remarks and late objections to the claims. 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:

Hughes Livestock Co.
PO Box 338
Stanford, MT 59479-0338

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

Water Right Number: 41S 121198-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: HUGHES LIVESTOCK CO
PO BOX 338
STANFORD, MT 59479-0338

Priority Date: JULY 1, 1916

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 197.03 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: 11.59

Source Name: WILLOW CREEK, NORTH FORK

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		SESENW	18	15N	12E	JUDITH BASIN

Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MARCH 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	1.45		E2SENW	18	15N	12E	JUDITH BASIN
2	10.14		NE	18	15N	12E	JUDITH BASIN

Total: 11.59

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.

121198-00 121199-00

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

Water Right Number: 41S 121202-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HUGHES LIVESTOCK CO
PO BOX 338
STANFORD, MT 59479-0338

Priority Date: SEPTEMBER 15, 1900

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 341.09 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: WILLOW 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		SWSENE	8	15N	12E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

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	6.00		SENE	8	15N	12E	JUDITH BASIN
2	17.00		W2NW	9	15N	12E	JUDITH BASIN

Total: 23.00

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

Water Right Number: 41S 121204-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HUGHES LIVESTOCK CO
PO BOX 338
STANFORD, MT 59479-0338

Priority Date: SEPTEMBER 15, 1898

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 224.40 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: 14.56

Source Name: UNNAMED TRIBUTARY OF WILLOW CREEK, WEST FORK

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		SWNESE	13	15N	11E	JUDITH BASIN

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

2	4	SENWSW	18	15N	12E	JUDITH BASIN
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Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO NOVEMBER 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	4.50		NESE	13	15N	11E	JUDITH BASIN
2	5.45		NWSW	18	15N	12E	JUDITH BASIN
3	4.61		NESW	18	15N	12E	JUDITH BASIN

Total: 14.56

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

Water Right Number: 41S 121205-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: HUGHES LIVESTOCK CO
PO BOX 338
STANFORD, MT 59479-0338

Priority Date: APRIL 15, 1906

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 377.91 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: 22.23

Source Name: WILLOW 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		SESESW	24	15N	11E	JUDITH BASIN

Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MARCH 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	18.46		NESE	24	15N	11E	JUDITH BASIN
2	1.22		SESENE	24	15N	12E	JUDITH BASIN
3	0.58		SWSWNW	19	15N	12E	JUDITH BASIN
4	1.97		NWNWSW	19	15N	12E	JUDITH BASIN
Total:	22.23						