

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: Hughes Newford Co.; Hughes & Sons Cattle  
Company

**CASE 41S-0525-R-2024**  
41S 13343-00  
41S 148581-00

**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 the following issue remarks:

### Claim 41S 13343-00:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 300 MINER'S INCHES DECREED IN CASE NO. 3 , FERGUS COUNTY. 41S 13343-00, 41S 148581-00.

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

THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY ( 1963 ) APPEARS TO INDICATE 79.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

USDA AERIAL PHOTOGRAPH NO(S). 30045-179-136 AND 30045-179-157 , DATED 09/17/1979 , APPEARS TO INDICATE 79.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

### Claim 41S 148581-00:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 300 MINER'S INCHES DECREED IN CASE NO. 3 , FERGUS COUNTY. 41S 13343-00, 41S 148581-00.

ON 05/17/1985 HUGHES NEWFORD CO. FILED A LATE OBJECTION TO THE OWNERSHIP, PLACE OF USE, POINT OF DIVERSION, VOLUME, AND FLOW RATE. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A DECREED RIGHT.

The claims were consolidated into Case 41S-0525-R-2024 on March 21, 2024 and on April 23, 2024 a status conference was held. On July 8, 2024, Hughes & Sons Cattle Co. filed documentation detailing an agreement between the parties to resolve the issue remarks on the claims. On July 18, 2024, Hughes Newford Co. filed a response stating that they concurred with the terms of the agreement detailed in the July 8, 2024 filing (collectively, the "Agreement").

On July 22, 2024, this Master issued an Order detailing the proposed modifications to the claims as described by the Agreement and as understood by this Master. The Order required the parties to file documentation if they believed it did not reflect the agreement between the parties. The Order further required the parties to detail how the proposed acreage reduction for claim 41S 148581-00 should be allocated between the two places of use. On July 29, 2024, Hughes & Sons Cattle Co. filed a

proposed abstract and map detailing the place of use for claim 41S 148581-00.

### FINDINGS OF FACT

1. Pursuant to the Agreement, claim 41S 13343-00 should be modified as follows:

**Flow Rate:** ~~7.50 CFS~~ **7.06 CFS**

2. Pursuant to the Agreement, claim 41S 148581-00 should be modified as follows:

**Type of Historical Right:** ~~FILED~~ **Decreed**

**Flow Rate:** ~~269.28 GPM~~ **195.5 GPM**

**Maximum Acres:** ~~46.00~~ **11.5 ac**

**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>
<del>4</del>	<del>4.00</del>		<del>SESW</del>	<del>28</del>	<del>15N</del>	<del>11E</del>	<del>JUDITH BASIN</del>
2	<del>45.00</del> <b>11.5</b>		SE	28	15N	11E	JUDITH BASIN
<b>Total:</b>	<del>16.00</del> <b>11.5</b>						

3. The flow rate modifications resolve the decree exceeded 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.

4. 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.

5. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

### CONCLUSIONS OF LAW

1. The Agreement between the parties resolves the decree exceeded issue remark.
2. The ‘acres irrigated’ issue remarks on claim 41S 13343-00 fail to overcome the prima facie status of the claim and should be removed.

### RECOMMENDATION

1. Upon review the record in this case, the claims should be modified as discussed above.
2. Modification of the claims resolves the decree exceeded remark on the claims as well as the ‘type of historical right’ issue remark on claim 41S 148581-00. The decree exceeded issue remarks should be removed from the claims and the ‘type of historical right’ issue remark should be removed from claim 41S 148581-00.
3. The ‘acres irrigated’ issue remarks should be removed from claim 41S 13343-00.
4. Pursuant to the Agreement, adoption of the modifications resolves the ‘late objection’ issue remark on claim 41S 148581-00.
5. The remaining remarks are notice-type remarks which provide notice that an element was modified during DNRC review. The remarks state that if no objections were filed, the elements would remain as they appeared in the decree and the remarks would be removed.

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 Newford Co.  
P.O. Box 558  
Stanford, MT 59479

Hughes & Sons Cattle Company  
P.O. Box 195  
Stanford, MT 59479-0195

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

**Water Right Number:** 41S 13343-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HUGHES NEWFORD CO  
PO BOX 558  
STANFORD, MT 59479

**Priority Date:** MAY 13, 1882

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 7.06 CFS

**Volume:** 225.00 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 85.50

**Source Name:** RUNNING WOLF 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		NESENW	22	15N	11E	JUDITH BASIN

**Period of Diversion:** MAY 1 TO SEPTEMBER 10

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO SEPTEMBER 10

**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		W2SE	15	15N	11E	JUDITH BASIN
2	48.00		W2NE	15	15N	11E	JUDITH BASIN
3	12.50		SWSE	10	15N	11E	JUDITH BASIN

**Total:** 85.50

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

**Water Right Number:** 41S 148581-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HUGHES & SONS CATTLE COMPANY  
PO BOX 195  
STANFORD, MT 59479-0195

**Priority Date:** MAY 13, 1882

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 195.50 GPM

**Volume:** 73.60 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 11.50

**Source Name:** RUNNING WOLF 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	28	15N	11E	JUDITH BASIN

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** DIKE

**Period of Use:** MAY 15 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	11.50		SE	28	15N	11E	JUDITH BASIN

**Total:** 11.50