

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

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

CLAIMANTS: Clifford A. Edwards Revocable Trust;
Judith Basin Hathaway Family Ltd
Partnership

CASE 41S-0833-R-2024

41S 126809-00
41S 126810-00
41S 126811-00
41S 126813-00
41S 131778-00

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. The Clifford A. Edwards Revocable Trust is the record owner of claims 41S 126809-00, 41S 126810-00, 41S 126811-00, 41S 126813-00, and 41S 131778-00. The Judith Basin Hathaway Family Ltd. Partnership is a record co-owner of claim 41S 126811-00.

2. Claims 41S 126809-00, 41S 126810-00, 41S 126811-00, 41S 126813-00, and 41S 131778-00 were decreed with DNRC issue remarks:

41S 126809-00:

- CLAIM NOS. 126809-00 AND 126810-00 MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.
- THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 103 TIMES THE CAPACITY OF THE RESERVOIR.
- THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.
- RESERVOIR RECORD 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.
- CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM..

41S 126810-00:

- CLAIM NOS. 126809-00 AND 126810-00 MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.
- THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.
- POINT OF DIVERSION AND RESERVOIR RECORD WERE 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.
- CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

41S 126811-00:

- USDA AERIAL PHOTOGRAPH NO(S). 30045-279-82 , DATED 09/18/1979 , APPEARS TO INDICATE 18.20 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE SOURCE NAME APPEARS TO BE INCORRECT. IT IS UNCLEAR TO DNRC IF THE SOURCE NAME SHOULD BE SUBIRRIGATION, UNNAMED TRIBUTARY OF WOLF CREEK OR WASTE & SEEPAGE, UNNAMED TRIBUTARY OF WOLF CREEK.

41S 126813-00:

- THE POINT OF DIVERSION AND MEANS OF DIVERSION MAY BE INCORRECT. THE CLAIMED DEVELOPMENT APPEARS TO INVOLVE THE SAME SPRING CLAIMED UNDER 41S 126810-00 WHICH INVOLVES A RESERVOIR. THEREFORE, IT APPEARS THE POINT OF DIVERSION SHOULD BE IN THE N2NENE SEC 6 TWP 17N RGE 13E JUDITH BASIN CO, THE MEANS OF DIVERSION SHOULD BE "DAM", AND A RESERVOIR RECORD IS NEEDED.

41S 131778-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY(1970)APPEARS TO INDICATE 28.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 09/29/1985 .

3. The Claimants were ordered to meet with a DNRC employee to address the unresolved issue remarks.

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating the DNRC reviewed documents from “the Claimant,” but the documents weren’t pertinent to the claims in this Case. (Doc.¹3.00). Ms. Bluhm indicated she reviewed an aerial photo and the Judith Basin Water Resources Survey field notes to prepare the Memorandum. Proposed abstracts and a map were attached to the Memorandum.

5. **41S 126809-00 and 41S 126810-00:** Ms. Bluhm recommended the volume for claim 41S 126809-00 be reduced to 60.00 acre-feet. Additionally, Ms. Bluhm recommended claim 41S 126810-00 be dismissed as it appeared to be a redundant claim with 41S 126809-00.

6. **41S 126811-00:** Ms. Bluhm recommended the maximum acres and place of use be modified as follows:

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

Maximum Acres: 49.00 155.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	38.00 40.00		SE	6	17N	13E	JUDITH BASIN
2	11.00 115.00		W2	5	17N	13E	JUDITH BASIN
Total:	49.00 155.00	49.00					

7. **41S 126813-00:** Ms. Bluhm recommended the point of diversion be modified to reflect a reservoir:

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	N2NENE	NWSENE	6	17N	13E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					Dam Height: 13 FT
Diversion Means:	LIVESTOCK-DIRECT-FROM-SOURCE DAM					Depth: 10 FT
Period of Use:	JANUARY 1 TO DECEMBER 31					Surface Area: 6 Acres
						Capacity: 24 AC-FT

8. **41S 131778-00:** Ms. Bluhm substantiated the claimed acreage. However, she recommended the priority date be modified to April 4, 1895, consistent with the filed notice of appropriation.

9. An Order was issued to determine if the Claimants agreed or disagreed with the recommendations made by Ms. Bluhm. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants 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. The period of diversion, reservoir record and volume issue remarks decreed on claim 41S 126809-00 indicate that if no objections are filed, the remarks will be removed with no changes to the claim; no objections were filed and the remarks can be removed

RECOMMENDATIONS

1. Claim 41S 126809-00 should be modified as follows:

*Volume: 60.00 2,480.00 AC-FT

Claim 41S 126810-00 should be dismissed. Claim 41S 126811-00 should be modified as follows:

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	38.00 40.00		SE	6	17N	13E	JUDITH BASIN
2	11.00 116.00		W2	5	17N	13E	JUDITH BASIN
Total:	155.00	49.00					

Claim 41S 126813-00 should be modified 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	N2NENE	NWSENE	6	17N	13E	JUDITH BASIN	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					Dam Height: 13 FT	
Diversion Means:	LIVESTOCK-DIRECT-FROM-SOURCE					DAM	Depth: 10 FT
Period of Use:	JANUARY 1 TO DECEMBER 31					Surface Area: 6 Acres	
						Capacity: 24 AC-FT	

Claim 41S 131778-00 should be modified as follows:

Priority Date: SEPTEMBER 7, 1893 APRIL 4, 1895

2. The issue remarks should be removed from claims 41S 126809-00, 41S 126811-00, 41S 126813-00, and 41S 131778-00.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Clifford A. Edwards Revocable Trust
 Clifford A. Edwards Trustee
 1648 Poly Dr, Ste 206
 Billings, MT 59102

Judith Basin Hathaway Family Ltd
 Partnership
 PO Box 1606
 Big Timber, MT 59011-1606

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

Water Right Number: 41S 126809-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: EDWARDS, A CLIFFORD REVOCABLE TRUST
EDWARDS, A CLIFFORD TRUSTEE
1648 POLY DR, STE 206
BILLINGS, MT 59102

Priority Date: AUGUST 15, 1948

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 60.00 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED, IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF 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		N2NENE	6	17N	13E	JUDITH BASIN

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

***Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	N2NENE	6	17N	13E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 6.00 ACRES

Capacity: 24.00 ACRE-FEET

THE DAM EXTENDS INTO THE NWSENE SEC 6 TWP 17N RGE 13E JUDITH BASIN COUNTY.

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			NE	6	17N	13E	JUDITH BASIN

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME OTHER.

70736-00

126809-00

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

Water Right Number: 41S 126810-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: EDWARDS, A CLIFFORD REVOCABLE TRUST
EDWARDS, A CLIFFORD TRUSTEE
1648 POLY DR, STE 206
BILLINGS, MT 59102

Priority Date:

Type of Historical Right:

Purpose (Use): FISH AND WILDLIFE

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF WOLF CREEK

Source Type: GROUNDWATER

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 126811-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: EDWARDS, A CLIFFORD REVOCABLE TRUST
EDWARDS, A CLIFFORD TRUSTEE
1648 POLY DR, STE 206
BILLINGS, MT 59102

HATHAWAY JUDITH BASIN FAMILY LTD PARTNERSHIP
PO BOX 1606
BIG TIMBER, MT 59011-1606

Priority Date: MARCH 20, 1946

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

Volume: 310.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 49.00

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF WOLF 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		SE	6	17N	13E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

2		W2	5	17N	13E	JUDITH BASIN
---	--	----	---	-----	-----	--------------

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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	38.00		SE	6	17N	13E	JUDITH BASIN
2	11.00		W2	5	17N	13E	JUDITH BASIN

Total: 49.00

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

Water Right Number: 41S 126813-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: EDWARDS, A CLIFFORD REVOCABLE TRUST
EDWARDS, A CLIFFORD TRUSTEE
1648 POLY DR, STE 206
BILLINGS, MT 59102

Priority Date: MARCH 20, 1946

Type of Historical Right: FILED

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: SPRING, UNNAMED TRIBUTARY OF WOLF 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		N2NENE	6	17N	13E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	N2NENE	6	17N	13E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 6.00 ACRES

Capacity: 24.00 ACRE-FEET

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			NESENE	6	17N	13E	JUDITH BASIN

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

Water Right Number: 41S 131778-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: EDWARDS, A CLIFFORD REVOCABLE TRUST
EDWARDS, A CLIFFORD TRUSTEE
1648 POLY DR, STE 206
BILLINGS, MT 59102

Priority Date: APRIL 4, 1895

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 3.22 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: 85.00

Source Name: 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		SWNWSW	14	18N	14E	FERGUS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO OCTOBER 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	63.00		SW	14	18N	14E	FERGUS
2	22.00		SE	14	18N	14E	FERGUS

Total: 85.00