

Montana Water Court
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FILED
02/25/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0503-R-2024
Block, Nathaniel
11.00

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

* * * * *

CLAIMANTS: Clayton R. Busch; Joyce C. Busch; Hughes
Newford Co.

OBJECTOR: Clayton R. Busch

CASE 41S-0503-R-2024
41S 10495-00
41S 10497-00
41S 10501-00
41S 13344-00
41S 16504-00

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

Claims 41S 10497-00, 41S 10501-00, and 41S 13344-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) with the following ‘decree exceeded’ issue remark:

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 250 MINER'S INCHES DECREED IN CASE NO. 3 , FERGUS COUNTY. 41S 10497-00, 41S 10501-00, 41S 13344-00.

The claims were consolidated into Case 41S-0503-R-2024 on March 1, 2024, and on August 26, 2024, a Stipulation and Settlement Agreement (“Agreement”) was filed (Doc.¹ 9.00).

The Agreement contemplates the withdrawal of claim 41S 10495-00 and includes a call provision for claim 41S 16504-00. Those two claims are hereby consolidated into this case for the purposes of this Master’s Report, though no abstract modifications for claim 41S 16504-00 are contemplated by the Agreement.

FINDINGS OF FACT

1. Pursuant to the Agreement, claims 41S 10495-00 and 41S 10497-00 should be dismissed. The Agreement stated that a withdrawal would be filed, no withdrawal has been filed, accordingly this Master is recommending dismissal of the claims.
2. The Agreement includes call provisions but does not request that a remark be placed on the abstracts to document the agreement.
3. Withdrawal of claim 41S 10497-00 resolves the decree exceeded remark on the claims.

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

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

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 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).

4. Where a claimant agrees to reduce or limit an element of a claim, “the water court does not need to determine whether the burden of proof has been met.” Rule 17(c), W.R.Adj.R. The Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. Claims 41S 10495-00 and 41S 10497-00 should be dismissed.
2. The issue remarks on the claims should be removed.

RECOMMENDATIONS

1. Claims 41S 10495-00 and 41S 10497-00 should be dismissed.
2. The issue remarks on the claims should be removed.
3. Dismissal of the claims as discussed above resolves the objections and they should be dismissed.

Post Decree Abstracts of Water Right Claims are attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

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Note: Caption and Service List Updated 12-31-2024

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41S PD\Cases\503\NB 41S-0503-R-2024 MR - Resolution of IRs 248 (NEW, multiple claims, DE, stip, POU, POD, FR, remove issue remarks) 12-30-2024 rr.docx

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

Water Right Number: **41S 10495-00** STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: **DISMISSED**

Owners: CLAYTON R BUSCH
 PO BOX 8
 STANFORD, MT 59479-0008

 JOYCE C BUSCH
 PO BOX 8
 STANFORD, MT 59479-0008

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: WOLF 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 10497-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: CLAYTON R BUSCH
 PO BOX 8
 STANFORD, MT 59479-0008

 JOYCE C BUSCH
 PO BOX 8
 STANFORD, MT 59479-0008

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: WOLF 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 10501-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRETT W BUSCH
55 SUN VALLEY LN
GREAT FALLS, MT 59405-8037

CLAYTON R BUSCH
PO BOX 8
STANFORD, MT 59479-0008

JOYCE C BUSCH
PO BOX 8
STANFORD, MT 59479-0008

Priority Date: MAY 3, 1882

Type of Historical Right: DECREED

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: WOLF CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SW	15	17N	12E	JUDITH BASIN
Period of Diversion: OCTOBER 1 TO MAY 10						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2		E2NW	15	17N	12E	JUDITH BASIN
Period of Diversion: OCTOBER 1 TO MAY 10						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3		W2NE	15	17N	12E	JUDITH BASIN
Period of Diversion: OCTOBER 1 TO MAY 10						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
Period of Use: OCTOBER 1 TO MAY 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			SW	15	17N	12E	JUDITH BASIN
2			E2NW	15	17N	12E	JUDITH BASIN
3			W2NE	15	17N	12E	JUDITH BASIN

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

Water Right Number: 41S 13344-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: MAY 3, 1882

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.25 CFS

Volume: 190.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 96.00

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		SENWSE	10	15N	11E	JUDITH BASIN
Period of Diversion:		MAY 1 TO SEPTEMBER 30				
Diversion Means:		HEADGATE				

Period of Use: MAY 1 TO SEPTEMBER 30

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	37.00		W2NE	10	15N	11E	JUDITH BASIN
2	45.00		SE	3	15N	11E	JUDITH BASIN
3	2.00		NENENW	10	15N	11E	JUDITH BASIN
4	4.00		SESWNE	3	15N	11E	JUDITH BASIN
5	8.00		E2SESW	3	15N	11E	JUDITH BASIN
Total:		96.00					

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.

13342-0013344-00141244-00

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

Water Right Number: 41S 16504-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: CLAYTON R BUSCH
PO BOX 8
STANFORD, MT 59479-0008

JOYCE C BUSCH
PO BOX 8
STANFORD, MT 59479-0008

Priority Date: MAY 3, 1882

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: 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		SW	15	17N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		E2NW	15	17N	12E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		W2NE	15	17N	12E	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			SW	15	17N	12E	JUDITH BASIN
2			E2NW	15	17N	12E	JUDITH BASIN
3			W2NE	15	17N	12E	JUDITH BASIN