

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

CLAIMANT: Coyote Creek

CASE 41S-0778-R-2024

41S 141253-00

41S 141254-00

41S 141255-00

41S 141256-00

41S 141257-00

NOTICE OF FILING OF SECOND 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.

SECOND MASTER'S REPORT

FINDINGS OF FACT

1. Coyote Creek (the Claimant) is the record owner of claims 41S 141253-00, 41S 141254-00, 41S 141255-00, 41S 141256, and 41S 141257-00.

2. A Master's Report was issued in this Case on February 28, 2025. (Doc. 1.00). The Master's Report recommended the following modifications be made to the claims in Case 41S-0778-R-2024, resolving the issue remarks decreed on the claims:

- Claim 41S 141253-00 should be modified as follows:

Priority Date: ~~JUNE 10, 1971~~ JUNE 24, 1971
Flow Rate: 40.00 GPM 25.00 GPM

- A second point of diversion should be added to claim 41S 141254-00:

SWNENW 4 12N 14E JUDITH BASIN
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM

Reservoir Record:
Dam Height: 8.00 FEET
Area: .30 ACRES
Depth: 8.00 FEET
Capacity: .98 AC-FT

- Claim 41S 141255-00 should be modified as follows:

Priority Date: ~~JUNE 10, 1971~~ JUNE 24, 1971
Flow Rate: 40.00 GPM 25.00 GPM

- Claim 41S 141256-00 should be modified as follows:

Flow Rate: 1.40 CFS 1.08 CFS
Maximum Acres: 37.00 28.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	15.00 17.00		S2NE	5	12N	14E	JUDITH BASIN
2	13.00 20.00		W2NW	4	12N	14E	JUDITH BASIN
Total:	37.00 28.00						

- Claim 41S 141257-00 should be modified as follows:

Flow Rate: 1.40 CFS 1.08 CFS
Maximum Acres: 37.00 28.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	15.00 17.00		S2NE	5	12N	14E	JUDITH BASIN
2	13.00 20.00		W2NW	4	12N	14E	JUDITH BASIN
Total:	37.00 28.00						

3. On March 17, 2025, Donald N. McKinlay, trustee of Coyote Creek, objected to the Master's Report stating:

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

The circle on the enclosed map is where the original wooden water pipe was that I dug up in the 50s. I think was the original point of diversion.

Your ~~am~~ aerial pictures from 1963 didn't show irrigation was because I was in the service and my dad's back had been broken by a horseback accident so he wasn't able to irrigate that year.

Wheeler had been owner for a while so he done the paper work for the water rights at that time, which turned out wrong.

(Doc. 6.00).

4. The Case was recommitted to Water Master Anika M. Stern for further proceedings. (Doc. 7.00).

5. It appeared Mr. McKinlay's Objections were specific to claims 41S 141254-00 and 41S 141257-00. However, it was unclear exactly how Mr. McKinlay proposed the claims be modified and to which portions of the Master's Report he objected. Further, it was possible modifications proposed by Mr. McKinlay would be considered a motion to amend implicating the notice provisions in Section 85-2-233(6), MCA. Therefore, to clarify Mr. McKinlay's Objections to the February 28, 2025 Master's Report and to determine how to proceed, an Order was issued requiring Donald N. McKinlay to file clarification of his Objections in Case 41S-0778-R-2024 by May 2, 2025. The Order stated:

The filing should include information regarding which portions of the February 28, 2025 Master's Report he objects to and specific information regarding how the claims or Master's Report should be modified to resolve the Objection; maps and proposed abstracts should be attached wherever appropriate. **If nothing is filed by the May 2, 2025 deadline, this Water Master will conclude Mr. McKinlay is not pursuing the Objection.** (emphasis in original)

(Doc. 8.00). Nothing was filed by the deadline.

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right constitutes 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.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just. In the present case, the Objection to Master's Report should be dismissed.

RECOMMENDATIONS

1. Donald N. McKinlay's Objections to the February 28, 2025 Master's Report should be dismissed.

2. The Recommendations made in the February 28, 2025 Master's Report should be adopted.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Coyote Creek
c/o Trustee, Donald N. McKinlay
PO Box 513
Lewistown, MT 59457

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

Water Right Number: 41S 141253-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: COYOTE CREEK
DONALD N MCKINLAY, CO TRUSTEE
PO BOX 513
LEWISTOWN, MT 59457-0513

Priority Date: JUNE 24, 1971

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 25.00 GPM

***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: GROUNDWATER

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		NENWNW	4	12N	14E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NENWNW	4	12N	14E	JUDITH BASIN
2			NESENW	4	12N	14E	JUDITH BASIN
3			NWNESW	4	12N	14E	JUDITH BASIN
4			NENWSE	4	12N	14E	JUDITH BASIN
5			NWNWNW	4	12N	14E	JUDITH BASIN
6			NESWSE	32	13N	14E	JUDITH BASIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

141253-00

141255-00

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

Water Right Number: 41S 141254-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: COYOTE CREEK
DONALD N MCKINLAY, CO TRUSTEE
PO BOX 513
LEWISTOWN, MT 59457-0513

Priority Date: JULY 1, 1972

Type of Historical Right: USE

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: 4 - MODERATELY LOW

Maximum Acres: 20.00

Source Name: COYOTE 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		SWNENW	4	12N	14E	JUDITH BASIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

2		SWNENW	4	12N	14E	JUDITH BASIN
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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>
	SWNENW	4	12N	14E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 2

Dam Height: 8.00 FEET

Depth: 8.00 FEET

Surface Area: 0.30 ACRES

Capacity: 0.96 ACRE-FEET

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	10.00		N2NWNE	4	12N	14E	JUDITH BASIN
2	10.00		NENW	4	12N	14E	JUDITH BASIN
Total:	20.00						

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

Water Right Number: 41S 141255-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: COYOTE CREEK
DONALD N MCKINLAY, CO TRUSTEE
PO BOX 513
LEWISTOWN, MT 59457-0513

Priority Date: JUNE 24, 1971

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 25.00 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 6.00

Source Name: GROUNDWATER

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		NENWNW	4	12N	14E	JUDITH BASIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: WELL

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	6.00		NWNW	4	12N	14E	JUDITH BASIN

Total: 6.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

141253-00 141255-00

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

Water Right Number: 41S 141256-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: COYOTE CREEK
DONALD N MCKINLAY, CO TRUSTEE
PO BOX 513
LEWISTOWN, MT 59457-0513

Priority Date: MARCH 16, 1889

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.06 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 28.00

Source Name: COYOTE 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		NWNESE	5	12N	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	15.00		S2NE	5	12N	14E	JUDITH BASIN
2	13.00		W2NW	4	12N	14E	JUDITH BASIN
Total:		28.00					

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.

141256-00141257-00

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

Water Right Number: 41S 141257-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: COYOTE CREEK
DONALD N MCKINLAY, CO TRUSTEE
PO BOX 513
LEWISTOWN, MT 59457-0513

Priority Date: SEPTEMBER 23, 1970

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.06 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 28.00

Source Name: COYOTE 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	5	12N	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	15.00		S2NE	5	12N	14E	JUDITH BASIN
2	13.00		W2NW	4	12N	14E	JUDITH BASIN

Total: 28.00

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.

141256-00 141257-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

135542-00

141257-00