

Montana Water Court
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FILED
03/18/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0323-R-2024
Block, Nathaniel
1.00

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

CLAIMANT: Hughes Livestock Co.

CASE 41S-0323-R-2024
41S 104225-00

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

Claim 41S 104225-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) and was decreed with the following issue remark:

A LATE OBJECTION HAS BEEN FILED TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE OF THE SPRING FROM THE SWNWNW OF SEC 30 TWP 15N RGE 12E JUDITH BASIN CO TO THE SWSWNW OF SEC 30 TWP 15N RGE 12E JUDITH BASIN CO. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

A letter in the claim file states that the correct legal description for the point of diversion and place of use for the claim is located in the SWSWNW of section 30 township 15N range 12E instead of the SWNWNW.

The original statement of claim included a 'Declaration of Vested Groundwater Rights' form that shows a spring in the SWSWNW of section 30.

Claim 41S 104225-00 is hereby consolidated into Water Court Case 41S-0323-R-2024 for the purposes of this Master's Report.

FINDINGS OF FACT

1. The point of diversion and place of use for the claim should be modified to the SWSWNW of S30 T15N R12E.
2. Adoption of the modification resolves the late objection identified by the issue remark and the remark itself.

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. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

CONCLUSIONS OF LAW

1. The point of diversion and place of use should be modified to the SWSWNW of S30 T15N R12E.
2. The issue remark on the claim should be removed as discussed above.

RECOMMENDATIONS

1. The issue remark should be removed from the claim for the reasons discussed above and the claim should be decreed with the elements as they appeared in the Preliminary Decree, except for point of diversion and place of use which should be modified to the SWSWNW of S30 T15N R12E.

A Post Decree Abstract of Water Right Claim is 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 104225-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: DECEMBER 31, 1959

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 FLAT 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		SWSWNW	30	15N	12E	JUDITH BASIN

Period of Diversion: MAY 1 TO NOVEMBER 30

Diversion Means: FLOWING

Period of Use: MAY 1 TO NOVEMBER 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			SWSWNW	30	15N	12E	JUDITH BASIN