

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: John J. Gee; Lisa Gee

CASE 41S-0913-R-2024
41S 10563-00
41S 10565-00

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. John J. Gee and Lisa Gee are the record owners of claims 41S 10563-00 and 41S 10565-00.

2. Claims 41S 10563-00 and 41S 10565-00 were decreed with DNRC issue remarks:

41S 10563-00

- THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 2 GPM.

41S 10565-00:

- 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.
- MEANS 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.

3. The issue remark decreed on claim 41S 10563-00 appears to be based on a Declaration of Vested Groundwater Rights (GW4) that was attached to the Statement of Claim. The GW4 states that the well described by claim 41S 10563-00 provides 2.00 gallons per minute (gpm):

4. The amount of groundwater claimed (in miner's inches or gallons per minute) **2 gallon per min.**

Therefore, as claimed, claim 41S 10563-00 over-claims the documented flow rate. Based on the information provided with the Statement of Claim, the flow rate for claim 41S 10563-00 should be 2.00 gpm.

4. The issue remarks decreed on claim 41S 10565-00 are notice-type remarks and do not require further proceedings.

5. An Order was issued setting a deadline for Claimants John J. Gee and Lisa Gee to agree or disagree that the flow rate for claim 41S 10564-00 should be 2.00 gpm, consistent with the information attached to the Statement of Claim.

The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agree the flow rate should be 2.00 gpm. The Order included the following language:

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 by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim. Sections 85-2-247 and 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. 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.

4. The notice-type issue remarks decreed on claims 41S 10565-00 have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The flow rate for claim 41S 10563-00 should be modified to 2.00 gpm.
2. The issue remarks should be removed from claims 41S 10563-00 and 41S 10565-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

John J. Gee
Lisa Gee
PO Box 381
Stanford, MT 59479

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

Water Right Number: 41S 10563-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

LISA GEE
65865 HIGHWAY 80 NORTH
STANFORD, MT 59479

JOHN J GEE
PO BOX 381
STANFORD, MT 59479-0381

Priority Date: DECEMBER 19, 1963

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 2.00 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		SWNWNW	15	16N	12E	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			SWNWNW	15	16N	12E	JUDITH BASIN

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

Water Right Number: 41S 10565-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JOHN J GEE
PO BOX 381
STANFORD, MT 59479-0381

LISA GEE
65865 HIGHWAY 80 NORTH
STANFORD, MT 59479

Priority Date: APRIL 30, 1963

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: SKULL 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		NWNWNW	15	16N	12E	JUDITH BASIN

Source Name: SKULL CREEK

***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>
	NWNWNW	15	16N	12E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 16.00 FEET

Depth: 13.00 FEET

Surface Area: 5.04 ACRES

Capacity: 26.21 ACRE-FEET

THE RESERVOIR EXTENDS INTO THE E2NE SEC 16 TWP 16N RGE 12E 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			W2NWNW	15	16N	12E	JUDITH BASIN