

Montana Water Court
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FILED
03/25/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0019-R-2024
Block, Nathaniel
4.00

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

CLAIMANTS: BNSF Railway Co.; Town of Stanford
OBJECTOR: BNSF Railway Co

CASE 41S-0019-R-2024
41S 1398-00

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 1398-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) and BNSF Railway Company filed an objection to the seeking to refine the legal description of the point of diversion from Section 16, Township 16N Range 12E to the NWSENW of Section 16, Township 16N Range 12E to reflect the historical point of diversion.

On March 11, 2024, the Town of Stanford filed a ‘Response to Objection’ stating that they concurred with BNSF’s proposed refinement and that the proposal correctly reflected the legal land description of the well.

FINDINGS OF FACT

1. The point of diversion should be modified to the NWSENW of S16 T16N R12E.
2. Adoption of the modification resolves the objection.

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.

CONCLUSION OF LAW

1. The point of diversion should be refined to the NWSENW of S16 T16N R12E.

RECOMMENDATION

1. The claim should be decreed with the elements as they appeared in the Preliminary Decree, except for point of diversion should be refined to the NWSENW of S16 T16N R12E. Adoption of the recommendation resolves the objection.

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:

Last Order:

Town of Stanford
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Stanford, MT 59479

Service via Electronic Mail:

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Note: Service List Updated 3-21-2024

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

Water Right Number: 41S 1398-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BNSF RAILWAY CO
% BLAINE BILDERBACK
2650 LOU MENK DR # MOB-2
FORT WORTH, TX 76131-2830

STANFORD, TOWN OF
PO BOX 123
STANFORD, MT 59479

Priority Date: JULY 31, 1930

Type of Historical Right: USE

Purpose (Use): MUNICIPAL

Flow Rate: 40.00 GPM

Volume: 64.50 AC-FT

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		NWSE	16	16N	12E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: STANFORD ORIGINAL TOWNSITE TRACT/LOT: 19 BLOCK: 6

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			NESE	17	16N	12E	JUDITH BASIN

Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION

2			NENE	17	16N	12E	JUDITH BASIN
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Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION

3			SWNE	17	16N	12E	JUDITH BASIN
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Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION

4			NWNW	16	16N	12E	JUDITH BASIN
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Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION

5			SWNW	16	16N	12E	JUDITH BASIN
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Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION

PLACE OF USE IS THE TOWN OF STANDFORD.