

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: Robert H. Barta; Rosemarie Barta

OBJECTORS: Robert H. Barta; Rosemarie Barta

CASE 41S-0008-R-2024

41S 30124125

41S 30124126

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

The above-captioned claims appeared in the Preliminary Decree for the Judith River (Basin 41S) and received objections from claimant Robert Barta.

The claims both received the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

The claims additionally received the following information remark regarding priority date:

THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE DATE OF FILING THE NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION (02/16/1970). THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

Mr. Barta filed objections seeking modifications of the priority date and point of diversion for both claims.

The claims are for groundwater appropriations without a well. A ‘Notice of Completion of Groundwater Appropriation Without Well’ (GW3) form was attached to both statements of claim. The GW3 was filed with the Judith Basin Clerk and Recorder office on February 16, 1970.

On February 26, 2024, the claims were consolidated into Water Court Case 41S-0008-R-2024 and an Order was issued requiring the claimants to file additional documentation to support their objections as to priority date and discussed the groundwater priority date issue presented by the claims (Doc.¹ 1.00).

FINDINGS OF FACT

1. The objections to the points of diversion for the claims seek to correct the legal land description from the NESWSE S6 T14N R15E to the NWSESE S6 T14N R15E. The objections state that a GPS device was used to confirm the legal land description and location of the spring box.
2. A GW3 was attached to both statements of claim. The GW3 forms describe the legal land description of the appropriation as follows:

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

3. The objections as to priority date sought to modify the priority date to reflect the priority date for exempt notice 41S 30016685 or, in the alternative, to March 26, 1968, the listed ‘date of completion’ of the GW3 attached to the Statements of Claim for claims 41S 30124125 and 41S 30124126. No additional evidence was filed to support the objections outside of the objections themselves.

4. Nothing was filed in response to the February 26, 2024, Order. The Order stated that “[f]ailure to comply with the filing deadline will be viewed as agreement that the priority date for both claims should remain as February 16, 1970”.

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.

3. 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, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.

4. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS

17, *6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v. Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, *6. It is within the power of this Court to terminate a water right claim if a claimant fails to participate. Rule 22. W.R.Adj.R.

CONCLUSIONS OF LAW

1. Evidence in the objection and the claim file overcomes the prima facie status of the point of diversion for both claims. The point of diversion should be modified to the NWSESE S6 T14N R15E to reflect historical use of the claim.
2. The objections as to the priority date of the claims failed to overcome the prima facie status of the claims and should remain as they appeared in the Preliminary Decree.
3. The issue remarks on the claims do not require proceedings to resolve and should be removed from the claims.

RECOMMENDATIONS

1. The point of diversion for the claims should be modified to the NWSESE S6 T14N R15E.
2. The objections to the claims should be dismissed for failure to prosecute the objection. The objections fail to overcome the prima facie status of the priority date element of the claims.
3. The issue remarks should be removed from the claims.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Robert H. Barta
Rosemarie Barta
11825 Hanover Road
Lewistown, MT 59457

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

Water Right Number: 41S 30124125 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: ROBERT H BARTA
11825 HANOVER RD
LEWISTOWN, MT 59457

ROSEMARIE BARTA
11825 HANOVER RD
LEWISTOWN, MT 59457

***Priority Date:** FEBRUARY 16, 1970

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 33.00 GPM

Volume: 2.13 AC-FT

Households: 1

Maximum Acres: 0.25

Source Name: SPRING, UNNAMED TRIBUTARY OF JUDITH RIVER

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		NWSESE	6	14N	15E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

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	0.25		NESWSE	6	14N	15E	JUDITH BASIN

Total: 0.25

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.

30124125 30124126

THIS RIGHT IS ONE OF EIGHT ASSOCIATED RIGHTS: EXEMPT NOTICE #: 41S-30016685, 41S-30016695, 41S-30016697, 41S-30016699, GROUND WATER CERTIFICATE #: 41S-30016696 AND 41S-30050383, AND STATEMENT OF CLAIM #: 41S 30124126. THEY SHARE A COMMON POINT OF DIVERSION.

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

Water Right Number: 41S 30124126 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: ROBERT H BARTA
11825 HANOVER RD
LEWISTOWN, MT 59457

ROSEMARIE BARTA
11825 HANOVER RD
LEWISTOWN, MT 59457

***Priority Date:** FEBRUARY 16, 1970

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 33.00 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: SPRING, UNNAMED TRIBUTARY OF JUDITH RIVER

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		NWSESE	6	14N	15E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

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			NESWSE	6	14N	15E	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.

30124125 30124126

THIS RIGHT IS ONE OF EIGHT ASSOCIATED RIGHTS: EXEMPT NOTICE #: 41S-30016685, 41S-30016695, 41S-30016697, 41S-30016699, GROUND WATER CERTIFICATE #: 41S-30016696 AND 41S-30050383, AND STATEMENT OF CLAIM # 41S 30124125. THEY SHARE A COMMON POINT OF DIVERSION.