

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: Merry Coats

CASE 41S-0768-R-2024
41S 139656-00

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. Merry Coats (Coats) is the record owner of domestic claim 41S 139656-00.

2. Claim 41S 139656-00 was decreed with a 30.00 gallon per minute (gpm) flow rate and a DNRC flow rate issue remark:

- THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 4.1 GALLONS PER DAY OR 0.07 GALLONS PER MINUTE. MORE INFORMATION IS NEEDED.

3. The issue remark decreed on claim 41S 139656-00 appears to be based on a well-log that was attached to the Statement of Claim. The well-log states that the 1912 well described by claim 41S 139656-00 pumps 100 gallons per 24-hour period:

Pumping water level.....feet at 100 gal. ~~per min~~ per 24 hrs.

4. An Order was issued setting a deadline for Claimant Merry Coats to agree or disagree that the flow rate for claim 41S 139656-00 be reduced to .07 gpm. (Doc.¹1.00).

5. On October 15, 2024, Coats filed a Response in Disagreement & Motion to Amend along with the Affidavit of Robert Coats. (Docs. 2.00 and 3.00). Information provided with the October 15, 2024 filings explains the following:

- The well described by claim 41S 139656-00 is the “Calkins Well.”
- The Calkins Well is underneath a house, owned by Merry Coats, at Lot 5 of Block 17, of the Stanford Third Addition. This is located within the SENENW of Section 16, Township 16 North, Range 12 East, Judith Basin County.
 - The point of diversion is presently listed as the NWNWNE of Section 16, Township 16 North, Range 12 East, Judith Basin County – property owned by John and Lisa Gee.
- Robert Coats tested the flow rate of the Calkins Well multiple times, using the bucket method and found that it “currently produces approximately 10 gpm...”

6. Coats proposes the following modifications to claim 41S 139656-00:

Flow Rate: 10.00 30.00 GPM

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	SENENW	NWNWNE	16	16N	12E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: STANFORD THIRD ADD TRACT/LOT: 005 BLOCK: 017

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

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	1.00	SENEW	NW1/4	16	18N	12E	JUDITH BASIN
Subdivision:		STANFORD THIRD ADD TRACT/LOT: 005 BLOCK: 017					
Total:		1.00					

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to resolve the issues raised by each issue remark. Section 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.

The flow rate information provided in the October 15, 2024 filings is sufficient to establish a 10.00 gallon per minute flow rate for claim 41S 139656-00.

3. Montana law allows claimants to amend statements of claim after the objection period in a basin has closed pursuant to Section 85-2-233(6), MCA. Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Soeey v. Petrolane Steel Gas, Inc.* (1985), 218 Mont. 418, 422-423.

The proposed corrections to the point of diversion and place of use legal land descriptions do not have a reasonable potential to adversely affect other water users and therefore do not require further notice as provided for in Section 85-2-233(6), MCA. The changes do not constitute expansions of the elements of the claims, they merely reflect corrections to the paper water rights. The use of the water right on the ground has not changed. The claim continues to use Calkins Well in Lot 5 of Block 17, of the Stanford Third Addition; the amendment corrects an erroneous legal land description.

RECOMMENDATIONS

1. Claim 41S 139656-00 should be modified as follows:

Flow Rate: 10.00 30-00 GPM

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	SEENW	NWNWNE	16	16N	12E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: STANFORD THIRD ADD TRACT/LOT: 005 BLOCK: 017

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	1.00	SEENW	NWNWNE	16	16N	12E	JUDITH BASIN

Subdivision: STANFORD THIRD ADD TRACT/LOT: 005 BLOCK: 017

Total: 1.00

2. The issue remark should be removed from claims 41S 139656-00.
An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Oliver J Urick
Hubble Law Firm PLLP
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Stanford, Mt 59479
406-566-2500 W
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Service List Updated: 10/22/2024

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

Water Right Number: 41S 139656-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MERRY COATS
PO BOX 293
STANFORD, MT 59479-0293

Priority Date: JANUARY 28, 1912

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 3.00 AC-FT

Households: 2

Maximum Acres: 1.00

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		SENENW	16	16N	12E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: STANFORD THIRD ADD TRACT/LOT: 005 BLOCK: 017

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	1.00		SENENW	16	16N	12E	JUDITH BASIN

Subdivision: STANFORD THIRD ADD TRACT/LOT: 005 BLOCK: 017

Total: 1.00