

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
Fax: (406) 522-4131
watercourt@mt.gov

FILED

JUN 15 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANTS: Ole Springhill Ranch LLC;
Family Andrews Rev Liv Trt Dtd 5/22/18;
Jefferson Island LLC;
Vest Family Limited Partnership

CASE 41H-R23

41H 42379-00 41H 139780-00
41H 42385-00 41H 139848-00

ON MOTION OF THE WATER COURT

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within **10 days** of the date of the Master's Report. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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. Claims 41H 42379-00, 41H 42385-00, 41H 139780-00, and 41H 139848-00 appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks.

2. The claims did not receive objections or notices of intent to appear.

3. The claims were called in on-motion by the Court over decree exceeded concerns. They were then consolidated into case 41H-R23.

4. Except for claim 41H 139848-00, these claims are all decreed rights based on Theodore Norman's portion of District Court Case 6429, Corbly Creek.

5. Theodore Norman was entitled to 200 miner's inches with a June 15, 1966 priority date.

6. Claim 41H 42385-00 has a flow rate of 22.44 GPM (2 miner's inches) and claim 41H 139780-00 has a flow rate of 4.95 CFS (198 miner's inches). Claim 41H 42379-00 is a stock right with no claimed flow rate, however even one livestock unit drinking would exceed the decreed amount of 200 miner's inches.

7. Claimants were given until May 6, 2020 to file information resolving issue remarks and the Court's on-motion concerns. If nothing was filed by the deadline, the Court stated a multiple use remark would be put on claims 41H 42379-00 and 42385-00 stating the following:

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.

8. Claims 41H 139780-00 and 41H 139848-00 also have issue remarks which state these two claims appear to be multiple uses of each other. Since these two claims

have different priority dates and claim 41H 139848-00 is listed as a use right, not a decreed right, the issue remarks should be removed.

9. On March 26, 2020, Claimant Vest Family Limited Partnership responded with typo corrections from the Order and a notice of potential ownership issue. No other responses were filed.

10. At present, the DNRC database ownership record for claim 41H 139780-00 includes Jefferson Island LLC and Vest Family Limited Partnership. However, this ownership does not wholly coincide with the current land ownership as found in the Montana Cadastral Survey database. According to the Survey, a part of the place of use for the claim is owned by Frank Norman Jr. and Gloria E. Norman Bypass Trust. Based on the survey, property owners Frank and Gloria Norman are on notice of their potential ownership and added to the service list. It is their obligation to transfer ownership into their names, if appropriate.

11. If Frank and Gloria Norman determine they have ownership interests in the claim, they may contact the DNRC to update the ownership. The DNRC may be contacted at the following:

<p><u>Contact Information</u> Bozeman Regional Office, DNRC 2273 Boot Hill Court, Ste. 110 Bozeman, MT 59715 (406) 586-3136</p>
--

12. The remaining issue remarks regarded modifications made by DNRC or priority date predating the decree. The purpose of these remarks was to serve notice of the change to water users. Since no objections or NOIAs were filed to these claims, the remarks have served their purpose and can be removed.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

5. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

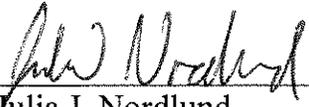
7. The Objection List issued in this basin gave all water users notice of the possible correction of the elements addressed in this Master's Report. This notice is reasonably calculated to inform parties of proceedings affecting their water rights.

8. For the above-mentioned reasons, the claims in this case should be modified as shown on the attached abstracts to resolve all issue remarks and to accurately reflect historical use.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claims are served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

DATED this 14th day of June, 2020



Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

Family Andrews Rev Liv Trt Dtd
5/22/18
953 Escondido Ct
Alamo, CA 94507-2468

Jefferson Island LLC
PO Box 1217
Manhattan, MT 59741-1217

Ole Springhill Ranch LLC
D/B/A Ole Springhill Homestead, LLC
10711 Corbly Gulch Rd.
Belgrade, MT 59714

Potential Owners:

Frank and Gloria Norman
9800 Gee Norman Rd
Belgrade, MT 59714-8410

Service via Electronic Mail:

Abigail R. Brown
ARB Law Group
7 West 6th Avenue, Ste 512
Helena, MT 59601
(406) 457-5494
(406) 206-5165 fax
abby@mtwaterlaw.com
office@mtwaterlaw.com