

Montana Water Court
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ELECTRONICALLY FILED

41H-0307-R-2021

December 1, 2021

Montana Water Court

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

CLAIMANT: Hammer Ranch LLC

OBJECTOR: West Gallatin Canal Company

CASE 41H-0307-R-2021
41H 138702-00

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, conclusion 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 41H 138702-00 is a furrow/flood irrigation claim owned by Hammer Ranch LLC. The claim received issue remarks questioning elements of the claim, including priority date. The claim received a late Objection from West Gallatin Canal Co. to the priority date and other elements of the claim. The claim was consolidated into Water Court Case 41H-307-R-2021.

FINDINGS OF FACT

1. On October 20, 2021, the Parties filed a signed Stipulation.
2. The Parties agree that the priority date for claim 41H 138702-00 should be amended from May 1, 1875, to October 8, 1909.
3. Following the filing of this Master's Report, West Gallatin Canal Co.'s objection will be fully and finally resolved so that it withdraws its Objection.

CONCLUSIONS 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, 85-2-102(12), 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.
3. Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA.
4. 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.
5. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeyer et al. v. Burkhartsmeyer 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.

6. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

7. The Stipulation entered into the record is sufficient to change the priority date of the claim to the more junior date of October 8, 1909.

8. The Stipulation resolves the issue remarks to the claim, and they can be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above for claim 41H 138702-00.

A Post Decree Abstract of Water Right Claim 41H 138702-00 is served with this Report to confirm the remark has been made in the State’s centralized water right record system.

Julia J. Nordlund
Senior Water Master

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Note: Service List Updated 11-22-21

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 138702-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HAMMER RANCH LLC
PO BOX 530
MANHATTAN, MT 59741 0530

Priority Date: OCTOBER 8, 1909

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FURROW/FLOOD

Flow Rate: 6.06 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 160.00

Source Name: BAKER 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		SESWNW	24	1N	3E	GALLATIN

Period of Diversion: MAY 15 TO AUGUST 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE

Ditch Name: EMERY DITCH

2		W2NW	24	1N	3E	GALLATIN
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Period of Diversion: MAY 15 TO AUGUST 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

Period of Use: MAY 15 TO AUGUST 15

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	40.00		NWNW	24	1N	3E	GALLATIN
2	40.00		NENW	24	1N	3E	GALLATIN
3	40.00		SWNW	24	1N	3E	GALLATIN
4	40.00		SENW	24	1N	3E	GALLATIN

Total: 160.00