

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

ELECTRONICALLY FILED

41H-0400-R-2021

December 28, 2021

Montana Water Court

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

CLAIMANT: Karen L. & Richard O. Vinton Revocable Living
Trust

CASE 41H-0400-R-2021
41H 139863-00

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 to 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 139863-00 is a stock claim owned by Karen L. and Richard O. Vinton Revocable Trust. The claim has a priority date of December 31, 1866 and is a use right. The claim received an issue remark stating that the priority date of the claim may be June 1, 1866 and an issue remark stating that the priority date may be questionable because it predates Gallatin County Case 1613.

FINDINGS OF FACT

1. On November 24, 2021, the Court issued an Order Consolidating Case and Setting Filing Deadline for Claimants to file evidence resolving the issue remarks to claim 41H 139863-00 no later than January 24, 2022.

2. The Order stated that the Statement of Claim for claim 41H 139863-00 provided a priority date of "1866" but did not specify a month. Other materials in the claim file indicate that the claim's priority date is June 1, 1866.

3. On November 29, 2021, Claimant Karen L. Vinton filed a response with the Court stating that "I agree with changing the proposed priority date to June 1, 1866."

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. 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.

4. 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.

5. Section 85-2-248(2), MCA, requires that the Montana Water Court resolve all issue remarks that are not resolved through the objection process.

6. 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.

7. 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 resolve issue remarks. Section 85-2-231(2), MCA.

8. 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.

9. Claimant provides a sufficient response to change the priority date of claim 41H 139863-00 to June 1, 1866.

10. Gallatin County Case 1613 is irrelevant because claim 41H 139863-00 is a use right.

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 139863-00.

A Post Decree Abstract of Water Right Claim 41H 139863-00 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

Service via USPS Mail:

Karen L. & Richard O. Vinton Revocable Living Trust
Karen L. & Richard O. Vinton Trustees
700 Little Bear Rd
Gallatin Gateway, MT 59730

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

Water Right Number: 41H 139863-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: VINTON, KAREN L & RICHARD O REVOCABLE LIVING TRUST
VINTON, KAREN L & RICHARD O TRUSTEES
700 LITTLE BEAR RD
GALLATIN GATEWAY, MT 59730

Priority Date: JUNE 1, 1866

***Type of Historical Right:** USE

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

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: BIG BEAR 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		S2NWNE	26	3S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			S2NWNE	26	3S	4E	GALLATIN