

Montana Water Court
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ELECTRONICALLY FILED

41H-0599-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

CLAIMANTS: Douglas R. Elson; Margret Elson

CASE 41H-0599-R-2021
41H 30115302

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

Claim 41H 30115302 is an exempt groundwater claim owned by Margret and Douglas R. Elson. The Statement of Claim was filed on August 4, 2017. An Amendment to the Statement of Claim was filed on February 12, 2018. The claim appeared in the Preliminary Decree for Basin 41H (Gallatin) with Department of Natural Resources and Conservation (DNRC) issue remarks. The claim is consolidated into Water Court Case 41H-599-R-2021.

FINDINGS OF FACT:

1. The following issue remarks notified Claimant and water users of the characteristics of the exempt claim and the unprocessed Amendment:

AN AMENDMENT WAS SUBMITTED ON 02/12/2018 REQUESTING TO AMEND THE FLOW RATE, VOLUME AND TYPE OF RIGHT. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

THIS EXEMPT CLAIM WAS FILED ON 10/05/2017. THIS CLAIM NUMBER WAS NOT INLCUDED IN THE BASIN 41H DECREE ISSUED ON 09/26/1985.

2. The following issue remarks notified water users of substantive issues with claim 41H 30115302 following its submission with the DNRC:

NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

ACCORDING TO CADASTRAL RECORDS, AS OF 10/10/2017, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY ELSON MARGRET HAGEMAN REVOCABLE TRUST AGREEMENT.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS AREA IS 4.8 ACRE-FEET PER ACRE.

3. The Amendment to the Statement of Claim requested to modify the flow rate to “anything under 35” gpm, a volume of 4.8 AF, and update the type of historical right to a use right.

4. The DNRC guideline for an exempt groundwater claim for a domestic purpose is 35 gpm.

5. The flow rate for claim 41H 30115302 is 25 gpm.

6. The DNRC calculation guideline for an exempt groundwater claim is $(1.5\text{AF} \times \text{number of households}) + (2.5\text{AF} \times \text{number of acres})$.

7. Claimant claims one household and 1.33 acres for use, so the volume for claim 41H 30115302 is 4.8 AF.

8. The type of right for claim 41H 30115302 is a use right with a priority date of December 31, 1947. Claimants provide in the Statement of Claim that the house using claim 41H 30115302 was built in 1947.

9. Documents in the claim file indicate that Claimants are affiliated with or trustees of the Elson Margret Hageman Revocable Trust Agreement. If Claimants chose to update the ownership of 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>
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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. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant’s requested reduction or limitation without further presentation of evidence. Rule 17(c) W.R.Adj.R.

10. Claimant agrees to reduce the flow rate of the claim to 25 gpm, which is below the DNRC guideline of 35 gpm for a domestic groundwater claim.

11. Because the correction involved change in type of right which constitutes a

clarification and a reduction, not an increase or expansion to any element of the claims, the amendment does not adversely affect other water rights. Notice by publication and personal mailing of the amendment was not required per Section 85-2-233(6), MCA.

12. Claimant clarified that claim 41H 30115302 is a use right.

13. Furthermore, the issue remarks to claim 41H 30115302 are resolved with the proposed changes provided in the Amendment and the Statement of Claim. The claim abstract for claim 41H 30115302 should reflect the amendments and additions provided above.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes recommended above in the Findings of Fact should be adopted for claim 41H 30115302.

A Post Decree Abstract of Water Rights Claim is served with the Report to confirm that the recommendations have been made in the State's centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

Douglas R. Elson
Margret Elson
3090 Sourdough Rd
Bozeman, MT 59715-9259

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

Water Right Number: 41H 30115302 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: DOUGLAS R ELSON
3090 SOURDOUGH RD
BOZEMAN, MT 59715 9259

MARGRET ELSON
3090 SOURDOUGH RD
BOZEMAN, MT 59715 9259

Priority Date: DECEMBER 31, 1947

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 4.80 AC-FT

Households: 1

Maximum Acres: 1.33

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		NWSENE	19	2S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	1.33		NWSENE	19	2S	6E	GALLATIN

Total: 1.33